UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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U.S. SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. 11 CV 7388 (JSR)

BRIAN H. STOKER,

Defendant. JURY TRIAL

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New York, N.Y.
July 16, 2012
10:20 a.m.

Before:

HON. JED S. RAKOFF,

District Judge

APPEARANCES

SECURITIES AND EXCHANGE COMMISSION
Attorneys for Plaintiff
BY: JEFFREY T. INFELISE
JANE M. E. PETERSON
ANDREW H. FELLER

KEKER & VAN NEST
Attorneys for Defendant
BY: JOHN W. KEKER
JAN N. LITTLE
STEVEN K. TAYLOR
BROOK DOOLEY

ALSO PRESENT: ROY CAMPOS, Technician
CHRIS INNIS, Paralegal
JACQUELINE HARTMANN, Paralegal
JEFF DAHM, Technician

(In open court)

(Case called)

THE DEPUTY CLERK: Will everyone please be seated who has a seat. And will the parties please identify themselves for the record.

MR. INFELISE: Good morning, your Honor. Jeffrey Infelise and Jane Peterson and Andrew Feller for the Securities and Exchange Commission.

THE COURT: Good morning.

MS. KEKER: Good morning, your Honor.

John Keker, Jan Little, Steve Taylor, and Brook Dooley for Mr. Stoker, who's present.

THE COURT: Good morning.

All right. The bad news is that we're still having computer problems, so you probably won't have LiveNote. So you'll probably have to rely on something you may not have heard of that's called pencil and paper. But if you don't happen to have one of those, we can supply that to you.

The good news is the jury panel should be here in five minutes.

So is there anything else we need to take up?

MS. KEKER: Yes, your Honor.

There are a couple of matters before the opening statement. We have exchanged objections to graphics that are going to be used during opening. And we would like those to be

heard before the opening statement.

There was also hanging fire the issue of compensation and Mr. Martens, which I don't think need to be resolved; we just need to agree that these won't be mentioned in the opening statement.

THE COURT: I had ruled on the Martens matter. I gave you permission to put in a brief motion citing any case law you had. I've looked at that over the weekend; I found it totally unpersuasive. I'll give you my reasons later; I don't want to take the time now. But his statement will not be admitted in evidence and, therefore, cannot be referred to.

MS. KEKER: Then Mr. Stoker's conversation --

THE COURT: And that can be referred to. Thank you very much for raising that.

MS. KEKER: We refer to it -- we were raising the issue of whether or not the amount -- we understand compensation, but not the amount.

THE COURT: Yes. No, the amount can be referred to.

So I'll give you all my rulings in more detail later, so you'll have a record for purposes of any potential appeal, but those are my rulings.

MS. KEKER: And can we at some point before the SEC's opening object to some of their slides that they intend to --

THE COURT: Yes. Let me see them now.

MS. KEKER: Slide No. 8, if we could -- do you want to

put them up?

The protection seller's piece is argumentative. It implies that these are retail customers, mom-and-pop. It's ridiculous. These are firms, they are qualified institutional investors. The whole point is that they are supposed to be able to fend for themselves.

We object to this description of them as real people. These are huge qualified institutional --

THE COURT: I don't see any description of them as real people. What you're referring to is the graphic there of the three blank-face human names?

MS. KEKER: That's correct, your Honor.

It clearly is meant to imply in an argumentative fashion the protection sellers --

THE COURT: All right.

Of course that's the view apparently held by the Supreme Court which defines corporations as persons for all purposes. And I think a blank-face human is probably a good substitute for a corporation. But, nevertheless, I agree with your point. So we should take that out.

MS. KEKER: And then the second one is on Slide 9. It appears several times throughout this bill, it's a chronology, but my point is the second one. October 26, 2006, it purports to describe in an argument Stoker model CDO Citigroup surety assets. Stoker model were CDOs with various possibilities,

including keeping the equity, which would be a long position without any shorts; keeping the equity, a long position, with 50 percent shorts. In short, it's much more complicated than that. That's argumentative and we object to that, as a description of -- the piece of evidence --

THE COURT: When you say it's argumentative, inherent in any opening statement is the notion that where a party says, Here's what we're going to prove, they are going to be taking a position on disputed matters as to what they expect the proof to show. You're going to be taking a different position.

But let me hear from the SEC on this.

MR. INFELISE: Yes, your Honor.

The term "short assets" is actually included in that email. In terms, the email talks about Mr. Stoker's calculated profits from shorting zero, 50, and 100 percent of the assets in the CDO. So that isn't inaccurate. It's accurate.

Sounds like Mr. Keker's objection is that we haven't tried to put in the whole email. But I believe that is an accurate representation of the portions which we believe is relevant.

THE COURT: All right.

On that representation I'll accept it.

MS. KEKER: That's it, your Honor.

THE COURT: Okay.

MR. INFELISE: Your Honor --

THE COURT: The jury is here. Unless it's something that has to be taken up before the jury is chosen, we'll take it up after the jury is chosen.

MR. INFELISE: All right.

It is our objection with respect to one of the graphics that --

THE COURT: We'll take that -- after we choose the jury, we're going to give them a ten-minute break, we'll take it up then.

MR. INFELISE: Thank you.

THE COURT: Let's bring the jury in.

MS. KEKER: We had a preliminary instruction on using the Internet, social media, and so on, that we submitted to the Court.

THE COURT: When did you submit it to the Court, as part of your request to charge?

MS. KEKER: Yes, your Honor. I have a copy.

THE DEPUTY CLERK: Jury entering the courtroom.

THE COURT: Bring it up to my law clerk.

(Jury panel present)

THE COURT: Good morning, ladies and gentlemen.

My name is Judge Rakoff, and we are about to pick a jury in a civil case.

This case is going to last approximately three weeks. Now, as federal cases go, that's not a particularly long case.

But counsel and I completely realize that it is a major inconvenience to anyone to have to serve on a jury for three weeks.

But those of you who have been on juries before will, I think, know what I say when I report that after a trial is over, always the jurors come to me and tell me what an inspiring experience it has been. And the reason for that is the tremendous responsibility and, if you will, power, that our Constitution gives to juries.

In most countries in the world, civil cases are decided by judges or, of course, in some countries, by dictators. But under our Constitution, we think that the determination of justice, the determination of the truth, the determination of what is the fair and just result in any given case, is too important to be left to anyone but citizens like yourselves drawn from all walks of life who come together, who reason together, and who decide, if they can, on a verdict.

Now, in a minute we're going to call up nine of you to the jury box there, and I will ask some questions of those nine persons. But I want all of you, if you would, to listen to my questions, because some of those nine will be excused. And when we call up the rest of you or some of you, I don't have to repeat all these questions; I'll just ask you did you hear my questions and do you have any questions you need to respond to.

So before we call you first up though, we will swear

you in.

(Jury panel sworn)

THE DEPUTY CLERK: As your name is called, please take your place in the jury box as indicated.

Juror No. 1 is Thomas Vidmar. Last name, V-I-D-M-A-R.

Please take the first seat in the first row of the jury box closest to the judge.

Juror No. 2 is Beau Brendler. Last name, B-R-E-N-D-L-E-R; first name, B-E-A-U.

Mr. Brendler, please come and take the second seat in the first row of the jury box.

Juror No. 3 is now Hallie Rouse. Last name, R-O-U-S-E; first name, H-A-L-L-I-E.

Mr. Rouse, if you would take the third seat in the front row of the jury box.

Juror No. 4 is Anacleto Lucas. Last name, L-U-C-A-S; first name, A-N-A-C-L-E-T-O.

Juror No. 5 is now Stevan Urbach. Last name, U-R-B-A-C-H; first name, S-T-E-V-A-N.

Mr. Urbach, if you would come through that entrance and go into the first seat of the second row of the jury box please. Thank you.

Juror No. 6 is now Beverly Bassoff. Last name, B-A-S-S-O-F-F.

Ms. Bassoff, if you would take the second seat in the

second row of the jury box.

Juror No. 7 is Ruperto Cordero. Last name, C-O-R-D-E-R-O; first name, R-U-P-E-R-T-O.

Mr. Cordero, if you would take the third seat in the second row of the jury box.

Juror No. 8 is now Jennifer Odeh. Last name, O-D-E-H.

Ms. Odeh, if you would please come and take the fourth seat in the second row of the jury box.

And Juror No. 9 is now Suzanne Roscio. Last name, R-O-S-C-I-O.

Ms. Roscio, if you would take the fifth seat in the second row of the jury box, please.

THE COURT: Ladies and gentlemen, let me tell you a little bit more about this case.

This is a civil case, as I mentioned. It's what's called a securities case.

And specifically, the SEC, the Securities and Exchange Commission, is the plaintiff. And they allege that the defendant, whose name is Brian Stoker, negligently misled some investors in connection with a particular investment that you'll hear more about.

But let me just ask you, is there anything about the general nature of this case that makes anyone think that they can't serve as a fair and impartial juror?

Very good.

Now, the case is going to last, worst case, I think three weeks. I'm actually going to try to ask the lawyers to do better than that, but I think you should assume on a worst-case basis that it would go three weeks, which would be, I think, Friday, August 3rd.

I should tell you we normally sit 9 to 5; we never go later than 5. There are some days when we'll stop sooner or start later because of other matters I have. We'll, of course, take an hour for lunch, and we'll take short 15-minute mid-morning and mid-afternoon breaks.

But is there anything about the schedule that presents an insuperable problem for anyone?

Yes, sir. I can't hear you.

JUROR: I made travel plans.

THE COURT: To where?

JUROR: To Europe.

THE COURT: Starting when?

JUROR: 30th.

THE COURT: You knew you had jury duty though?

JUROR: No.

THE COURT: You didn't receive a jury notice?

JUROR: Not at the time, no.

THE COURT: Excuse me?

JUROR: I have a large financial commitment.

THE COURT: That's not my question.

When did you receive your jury notice?

JUROR: I don't recall.

THE COURT: And had you previously postponed your jury service?

JUROR: I had an operation to my knee, yes.

THE COURT: So you had postponed it, so you knew that this time you wouldn't be able to get a further postponement, so you needed to put some time aside to serve.

JUROR: At the time it wasn't known.

THE COURT: What's the nature of this trip?

JUROR: It's a family vacation.

THE COURT: And it starts on the 30th?

JUROR: Yes.

THE COURT: And where is it, it's to Europe?

JUROR: It's to my wife's country, yes, Ireland.

THE COURT: Let me think about this for a few minutes.

Anyone else?

Yes.

JUROR: I just have some scans that I have to go to for my head and brain for a potential ailment on Thursday.

THE COURT: What time?

JUROR: Nine a.m.

THE COURT: We're not going to be sitting on Friday morning of this week because I have to perform a wedding.

Would you be available if I was able to move it from

Thursday to Friday?

JUROR: I could check. I would need to call and see if they have any availability, because I'm having two scans back-to-back.

THE COURT: Where is it?

JUROR: It's at East River Imaging uptown.

THE COURT: I'd be happy to call on your behalf, as well, to explain the situation.

JUROR: Sure.

THE COURT: I think we can probably work that out.

JUROR: Okay. That's fine.

THE COURT: Anyone else?

All right. Since you're the only one, we will excuse Juror No. 5, Mr. Urbach. You are excused.

THE DEPUTY CLERK: Please come up, get your card, and return to the main jury room.

Juror No. 5 is now Kelly Golden. Last name, G-O-L-D-E-N.

Ms. Golden, you can come along the front and take the second seat in -- the first seat in the second row.

THE COURT: Ms. Golden, you heard my couple questions so far. Any of those you need to respond to?

JUROR: Not at this time, no.

THE COURT: Okay.

So, ladies and gentlemen, my job as the judge will be

to give you the instructions of law, and your job will be to determine what the facts are, what the truth is, and then to apply the instructions of law to those facts.

Is there anyone who feels they wouldn't be able to do that?

Very good.

I'm going to ask counsel for both sides to introduce themselves and introduce their clients. And as they do that, I'm going to have some more questions.

And we'll start with plaintiff's counsel.

MR. INFELISE: Yes, your Honor. Thank you.

I'm Jeffrey Infelise, representing the Securities and Exchange Commission.

MS. PETERSON: I'm Jane Peterson, representing the Securities and Exchange Commission.

MR. FELLER: I'm Andrew Feller, representing the Securities and Exchange Commission.

THE COURT: Sir?

MR. INFELISE: Excuse me, your Honor.

This is Chris Innis he's a paralegal.

THE COURT: He still needs to be introduced, as does the other gentleman.

MR. INNIS: Chris Innis, representing the Securities and Exchange Commission.

MR. CAMPOS: Roy Campos for the SEC.

THE COURT: So does any member of the panel know any of those folks?

Does any member of the panel work for the Securities and Exchange Commission?

Does any member of your immediate family work for the Securities and Exchange Commission?

Let me tell you what I mean by "immediate family." I mean your parents; your spouse, if you're married; your significant other; your brothers and sisters; and your children. I'm not interested in more distant relatives, second cousins or whatever.

Any member of your immediate family work for the Securities and Exchange Commission?

Does any member of the panel work for any agency of the federal government?

Does any member of the panel work for -- any member of your immediate family work for any agency of the federal government?

Very good.

Let's turn to counsel for the defense.

MS. KEKER: Thank you, your Honor.

I'm John Keker, representing Brian Stoker.

Mr. Stoker is right here.

MS. LITTLE: I'm Jan Little.

MR. TAYLOR: Steve Taylor for Mr. Stoker.

MR. DOOLEY: Brook Dooley, also for Mr. Stoker.

MS. HARTMANN: I'm Jackie Hartmann for Mr. Stoker.

MR. DAHM: Jeff Dahm for Mr. Stoker.

THE COURT: Does any member of the panel know any of the folks who were just introduced at the defense team?

Mr. Stoker was previously employed at Citigroup, and Citigroup will come up in the course of the evidence.

Does any member of the panel work for or have stock in Citigroup? Does any member of your immediate family work for or, to your knowledge, have stock in Citigroup?

Yes, ma'am.

JUROR: My sister-in-law used to be an executive at Citigroup.

THE COURT: And what kind of executive was she?

JUROR: She was -- I can't even think of the term. She handled big accounts and all that, whatever was up there.

THE COURT: When did she leave?

JUROR: She left about nine years ago to have children.

THE COURT: Is there anything about that that would prevent you from being a fair and impartial juror in this case?

JUROR: No.

THE COURT: Very good.

There's another banking institution whose name may

also come up in the course of the testimony, Credit Suisse.

Does any member of the panel work for or have stock in Credit Suisse?

Does any member of the panel -- excuse me. Does any member of your immediate family work for, have, to your knowledge, stock in Credit Suisse?

Very good.

Now I'm going to read you a long list of names. Some of these names will be witnesses, others will just be names that come up in the course of the testimony. And then I want you to tell me whether you personally know any of these folks:

Nestor Dominguez, Professor Dwight Jaffee, Donald Quintin, Brian Carosielli, Muhammed Sohail Khan, Shalabh Mehrish, Darius Grant, Robert Pinniger, Illias Islamov, Robert MacLaverty, Murray Barnes, David Salz, Elizabeth Besio Hardin, Jonathan Neuberger, John Popp, Samir Bhatt, Michael Shackelford, Gene Deetz, Denise Crowley, Josh Greenwald, Kenneth Wormser.

Anyone on the panel know any of those folks?

Yes.

JUROR: I know a Barbara Barnes, has a sister by the name of Mary Bonds.

THE COURT: I'm sorry, which name was this?

JUROR: Bonds.

THE COURT: No, there was no one -- I must have

mispronounced it. There's no one named Bonds on that list.

JUROR: Oh.

THE COURT: Oh, Barnes, I'm sorry, B-A-R-N-E-S.

JUROR: Yes.

THE COURT: Oh, I'm sorry. I thought you said "Bonds."

JUROR: I'm sorry.

THE COURT: Barnes.

So this is Murray Barnes. Do you know Mr. Murray Barnes?

JUROR: No, but I know a Barbara Barnes that has a sister Mary Barnes.

THE COURT: Okay. But this is Murray, M-U-R-R-A-Y.

JUROR: Oh, I'm sorry. I thought you said Mary.

THE COURT: Very good. Thanks very much.

Does any member of the panel have any problem with your eyesight or with your hearing that you would have any difficulty seeing and hearing the witnesses who will be testifying from this little stand next to me?

Does any member of the panel have any problem speaking, reading, or understanding English?

Very good.

Has any member of the panel ever been a party to a lawsuit, meaning either you sued someone as a plaintiff or you personally were sued as a defendant? I only mean you

personally; I'm not interested in your immediate family right at the moment, just you personally.

Anyone been a party to a lawsuit?

Very good.

We're going to ask you later your occupation, but just generally, does anyone have any professional experience in the finance industry?

Yes, ma'am.

JUROR: I spent 14 years working for Bankers Trust; several of those would be securities, so I have a securities background.

THE COURT: Okay. And so we'll talk when we get to you. We'll follow up on that. But thank you for letting me know that.

Yes, sir.

JUROR: I worked -- I'm retired. Employee of New York Life. And we do financial services. And part of my job was to print statements that the company needed about certain people when it came up, financial statements.

THE COURT: Okay. So, again, we're going to follow up some more in a minute, but thank you for letting me know.

As I mentioned, the defendant worked during the relevant time for this case at Citigroup. This was during the years 2005 to 2008. And the investments that he was involved in are what they call structuring, related to the housing

market.

Does anyone have any views about the role of banks in connection with downtown, the housing markets, that would prevent you from being, in your view, a fair and impartial juror?

Very good.

Has anyone seen or heard anything in the media or anywhere else about this case?

Yes. Come to the side bar.

(Continued on next page)

(At the side bar)

JUROR: I'm going to tend to follow the financial services industry closely. I think I may have read about this in *The Wall Street Journal*.

THE COURT: Is there anything about that that would prevent you from being a fair and impartial juror?

JUROR: My tendency -- my recollection was feeling negatively towards the defendant in this, just coming up with -- just feeling that there was good evidence.

THE COURT: Well, let me put it to you a different way.

Obviously it's critical that any juror only decide the case based on the evidence presented here in court, not on anything you've read or heard beforehand or in the media or anything else. So lots of people come in, and they've heard this or that or whatever.

The real question is can you put that aside and be fair and impartial by judging this case purely on the evidence in this case?

JUROR: I think it would be somewhat difficult.

THE COURT: Okay. We'll excuse you then.

JUROR: Thank you.

(Continued on next page)

(In open court)

THE DEPUTY CLERK: Juror No. 7 is now -- Juror No. 6 is now Susan O'Hara, last name O-H-A-R-A.

Ms. O'Hara, please take the second seat in the second row of the jury box.

THE COURT: So, Ms. O'Hara, you heard my questions so far. Any of those you need to respond to?

JUROR: My job is financially-related. I work for a retail company as a director of finance, responsible for expenses.

THE COURT: Okay. When we get to you individually, we'll take that up.

Now, I mentioned before the plaintiff in this case is the SEC, the Securities and Exchange Commission. Is there any member of the panel who has any views about the Securities and Exchange Commission that would prevent them from being a fair and impartial juror in this case?

Very good.

All right. Let's talk individually.

I'm going to ask each of you to tell me the county or borough in which you live -- I don't need to have your address, just the county or borough -- what you do for a living, if you have a spouse or a significant other, what that person does for a living.

And I think we'll just start with those questions.

So Mr. Vidmar, is it?

JUROR: Yes.

THE COURT: So tell us about yourself.

JUROR: I'm a retired employee of New York Life Insurance Company.

I currently have a hobby of autograph collecting that I do in my time.

I share an apartment with my brother, who's also a retired employee of New York Life Insurance Company; was a financial analyst when he was active.

And we both live in Tarrytown, New York, which is in Westchester.

THE COURT: Okay.

Just out of my curiosity, what kind of autographs?

JUROR: Celebrities. The ones that you see on TMZ that hound you. Celebrities.

THE COURT: So I have in my chambers an autographed baseball from Mariano Rivera. So should I consider myself a rich man now?

JUROR: You can consider yourself a lucky man, because a lot of the Yankees are tied into a company that they'll only sign for them.

THE COURT: Okay. Well, I'll take it to be lucky is better than to be rich.

So you heard me generally describe the case. You have

a little background. And certainly we don't excuse jurors because they know something about finance or anything like that. But is there anything about your background or your former occupation that makes you think you could not be fair and impartial in this case?

JUROR: No.

THE COURT: Very good.

All right. Mr. Brendler.

JUROR: Yes.

THE COURT: Tell us about yourself.

JUROR: I live in Putnam County, in Patterson, New York. I'm a writer and consultant.

My wife -- I live in a house with my wife and two children. My wife works as executive director of a museum, support organization in Tarrytown.

THE COURT: And what kind of writing do you do?

JUROR: Right now it's about the future of the Internet and technology and things like that. I have in the past written about financial issues, and in some circumstances financial crime.

THE COURT: Okay. Anything about that that would prevent you from being a fair and impartial juror in this case?

JUROR: No, sir.

THE COURT: Very good.

Mr. Rouse, is it?

JUROR: Yes.

THE COURT: Tell us about yourself.

JUROR: I'm a Manhattan resident. I currently work with the Harlem Children's Zone Practitioners Institute, sharing in philosophies and ways of doing things with organizations that's looking to replicate our works in their communities around the country. Also serve as a liaison for organizations planning for different federal grants.

My girlfriend, she's a supervisor for a group of social workers for a nonprofit organization called Children's Village.

THE COURT: Very good.

Mr. Lucas, is it?

JUROR: Yes.

I currently live in Westchester. I'm from Yonkers.

I'm a rehabilitation specialist for the mentally challenged. I structure them to go back out to the community to work and build self-esteem for themselves.

I currently live by myself.

THE COURT: Okay. Ms. Golden.

JUROR: I'm from Westchester County, Peekskill.

I'm a payroll accountant for an investment and real estate firm, real estate investment firm.

I live in Peekskill by myself.

THE COURT: Anything about your background and

occupation that would prevent you from being a fair and impartial juror?

JUROR: I don't think so.

THE COURT: Okay.

Ms. O'Hara.

JUROR: I live in Westchester County, as well.

I work for the Jones Group, and I manage all expenses for their retail stores that have any of our brand names on them.

I do live with my husband. He is a director of special ed. for the Board of Ed. And we have a little girl.

THE COURT: And anything about your background that would prevent you from being a fair and impartial juror in this case?

JUROR: No.

THE COURT: Mr. Cordero.

JUROR: Yes.

I live in Manhattan, and I'm security officer in New York INE Infirmary.

My wife retired there. She stays home. She used to work in medics. That's about it.

THE COURT: I'm sorry.

Do you live in Manhattan did you say?

JUROR: Yes.

THE COURT: Very good.

Ms. Odeh, is it?

JUROR: Odeh.

THE COURT: Odeh. Thank you.

JUROR: You're welcome.

Currently I live in Westchester. I'm married.

I work at Home Depot as a sales specialist; so I design window treatment. And my husband work for Miracle Security.

THE COURT: Very good.

And Ms. Roscio.

JUROR: Very good.

THE COURT: Lucky.

JUROR: You know, my occupation is registered medical assistant. But I'm also a caterer. And I'm in school for my dietician and nutrition degree.

I live at home with, actually, my wife. Go New York.

She is an executive director at City Harvest, you know, managing many different aspects of interdepartments, including nutrition education programs and agency relations.

THE COURT: Did you say where you lived?

JUROR: Oh, Tarrytown, New York.

THE COURT: Tarrytown. Thank you very much.

All right.

So, ladies and gentlemen, at this point counsel get to exercise what are called peremptories challenges. That means

they can remove from the jury three persons per side for any of a very wide variety of reasons. And you should not speculate as to why counsel excuses one person or another.

We do this in rounds. So in each round, counsel has one peremptory challenge, so we'll start with the first round, one challenge for each side.

(Continued on next page)

THE DEPUTY CLERK: Your Honor, Jurors 5, Kelly Golden, and 1, Thomas Vidmar, are excused. Please come up, get your cards and return to the main jury room.

Juror No. 1 is now Travis Dawson, last name D-A-W-S-O-N. Mr. Dawson, please come up and take the first seat in the front row of the jury box.

And Juror No. 5 is now Maureen Dillon, last name D-I-L-L-O-N. Ms. Dillon, first seat in the second row, please.

THE COURT: Mr. Dawson, you heard my general questions before. Any of those that you need to answer?

JUROR: No, sir.

THE COURT: Then tell us about yourself.

JUROR: I'm from the Bronx. I live at home with my mom, my grand mom, my uncle. I'm a stylist at Clamont Cove (phonetic) retail store. I sell clothes and currently go to Baruch College, studying corporate communications. And that's it.

THE COURT: Good. Ms. Dillon, you heard my general questions. Any of those you need to respond to?

JUROR: No.

THE COURT: Tell us about yourself.

JUROR: I live in Westchester County. I teach math and science to fifth grade students. I live with my husband, who is an attorney.

THE COURT: What kind of law does he practice?

JUROR: He does international maritime.

THE COURT: Okay. Counsel, exercise their second round of challenges, one challenge per side.

(Pause)

THE DEPUTY CLERK: Your Honor, Jurors 5 and 8. 5 is Maureen Dillon and 8 is Ms. O'Dey, are excused. Please come up, get your cards and return to the main jury room.

Juror No. 5 is now Aaron Katz, last name K-A-T-Z. Mr. Katz, please come up and take the first seat in the second row. Might be easier if you walk along the front of the jury box.

And number 8 is Anthony Rondinone, R-O-N-D-I-N-O-N-E. Please come up and take the fourth seat in the second row.

THE COURT: Mr. Katz, you heard my general questions. Any of those you need to respond to?

JUROR: Yes, your Honor. I used to work for the federal government and the Assistant United States Attorney in this district.

THE COURT: Well, you have my condolences.

And when did you leave?

JUROR: 2000.

THE COURT: And what do you do now?

JUROR: Now I run a small investment fund, but until January 1st of this year, this is the second responsive question, I worked at Credit Suisee.

MR. KEKER: I couldn't hear that.

THE COURT: He worked for Credit Suisse until six months ago. So I think on that ground we need to excuse you. Thank you very much.

THE DEPUTY CLERK: Juror No. 5 is now Susan Bowers, B-O-W-E-R-S. Ms. Bowers, please come and take the first seat in the second row. I'm sure there must be a seat or two available now, if people would move closer together so other people could sit down.

THE COURT: So, Ms. Bowers, you heard my general question. Any of those you need to respond to?

JUROR: No.

THE COURT: Tell us about yourself.

JUROR: I own a small business in Bedford. I live in Westchester with my husband.

MR. KEKER: Sorry, your Honor?

THE COURT: Can you speak a little louder.

She said she owns a small business in Westchester where she lives with her husband.

JUROR: My husband worked for Merrill Lynch for 23 years as an investment banker and currently works at Bethly Associates.

THE COURT: And is there anything about his occupation that makes you think you could not serve as a fair, impartial juror?

JUROR: No.

THE COURT: Okay. And what kind of small business do you run?

JUROR: It's a retail firm called Ozienty (phonetic).

THE COURT: What does it sell?

JUROR: Clothing, jewelry accessories.

THE COURT: Okay. Probably going to get this wrong. Mr. Rondinone?

JUROR: Yeah. Good.

THE COURT: So you heard my general questions. Any of those you need to respond to?

JUROR: Nope.

THE COURT: Tell us about yourself.

JUROR: I live in the Bronx, and I'm a musician.

THE COURT: And what do you play?

JUROR: I play guitar and I sing.

THE COURT: Are you single or married?

JUROR: Single.

THE COURT: And do you have a significant other?

JUROR: Nope.

THE COURT: Very good. Okay. Counsel, exercise their final round of challenges, one challenge per side.

(Pause)

THE DEPUTY CLERK: Your Honor, Jurors No. 9, Susan Rotio, and 5, Susan Bowers, are excused. Please come up, get

your cards. You will be returning to the main jury room.

No. 5 is now Colleen Laware, L-A-W-A-R-E. Please come up and take the first seat in the second row of the jury box.

No. 9 is now Beverly Criner, last name C-R-I-N-E-R. Ms. Criner, if you will come up and take the fifth seat in the second row of the jury box.

THE COURT: Ms. Laware, you heard my general questions before. Any of those you need to respond to?

JUROR: Just one to let you know my position in the financial services industry. I'm a CPA. I work for PriceWaterhouseCoopers as a manager in their financial instrument and structure products and real estate group. I do valuation services and structuring for fixing home products, primarily mortgage backed securities, CDOs and CLOs.

THE COURT: Come to the side bar with counsel.

(At side bar)

THE COURT: So, the evidence in this case is going to involve evidence about the structuring of CDOs and how they were represented then to investors. So obviously you have some knowledge that is relevant, but if you're a juror on this case, you'll have to judge this case just on what's presented here in court.

So with that introduction, so to speak, are you confident that you can be a fair and impartial juror?

JUROR: Definitely be fair and impartial.

MR. KEKER: Your Honor, I couldn't hear where she works.

THE COURT: PriceWaterhouse.

MR. KEKER: I heard CPA, just didn't get the first part.

THE COURT: So anything else counsel want to ask this juror?

MR. KEKER: And I didn't hear if you worked in structured products. Did you work with CDOs, with collateralized --

JUROR: Yes.

MR. KEKER: And have you participated in reviewing offering memoranda?

JUROR: Yes. I've worked in structuring them as the accountant side, and I also do valuation work for them, which includes reading offering memorandums and indentures and modeling services.

THE COURT: All right. Go back to your seat, and I need to talk to counsel just for a minute.

(Juror excused)

MR. KEKER: She's fine with us.

MR. INFELISE: No, your Honor. I think what we have is an expert in the jury box. She said --

THE COURT: I'm sorry?

MR. INFELISE: I know what she said, she'd be able to

set aside and listen to evidence, but I think it would be impossible for her to divorce what she's done and knows about from what she hears. And I'm really concerned that what we've done is we've put into the jury box an expert who the other jurors would look to for guidance on these matters.

THE COURT: Well, I don't see that it's any different from -- you get attorneys all the time who are in one sense experts on the law, but the jury always is able -- after the lawyer has said that he understands he has to follow the Court's instructions of the law, the jury is always able to deal with the Court's instructions of law without deferring to the attorney.

So I don't see why that's any different in the case of an accountant. Particularly because you don't have any peremptory challenges left, I do want to give you both the opportunity to question her. But she is confident she can be a fair and impartial juror. She told me she fully understood the need to put aside her prior experiences and judge this case purely on what's presented. The law does not say that to be a fair and impartial juror you have to be an ignoramus. So --

MR. INFELISE: I understand that, your Honor. And I think it's different with lawyers, too, because lawyers understand their role and what they can't do. But you have a person here who's -- she said, looking off of circulars, analyzing these very instruments. I think it difficult, if

almost impossible, regardless of her best intentions, to set that aside.

THE COURT: Well, if your case is what you allege it to be, she should be the first one to recognize the problems that you're alleging. I'm going to keep her.

MR. INFELISE: All right, Judge. Thank you.

(In open court).

THE COURT: So, Ms. Laware, tell us the rest about yourself.

JUROR: I live in Westchester County with my husband. And he runs the operations for a small investment management firm in White Plains.

THE COURT: And is there anything about his occupation that would prevent you from being a fair and impartial juror in this case?

JUROR: I don't think so.

THE COURT: Okay. Ms. Criner, is it?

JUROR: Criner.

THE COURT: Criner, thank you very much.

You heard my general questions. Any of those "you need to respond to?

JUROR: No.

THE COURT: Tell us about yourself.

JUROR: I live in Harlem, Manhattan. I work at Harlem hospital as a clinical X-ray technologist. And I'm divorced.

THE COURT: Okay. Very good. So, ladies and gentlemen, you are our jury to try this case. Now we're going to swear you in in a minute. But before we do that, let me give you some housekeeping instructions.

First, you should not discuss this case in any way, shape or form with anyone outside of this courtroom, other than if you have to tell an employer or a spouse, I'm going to be on jury duty for three weeks. That's fine. But when they inevitably say to you, gee, what's the case about, you have to say to them, I'm sorry but I can't discuss the case with you.

The reason for that is obvious. We want you to decide this case solely and wholly on the evidence you hear right here in court, not on the views that someone who hasn't been here might have about the case.

So don't discuss the case. Don't try to find out anything about the case by Googling or anything else. We want you to address this case solely and wholly on the evidence heard here in court.

The second housekeeping rule is maybe not so obvious. You should not discuss the case even among yourselves until the close of all the evidence, until you've heard my instructions of law, and then the case will be given to you for your decision. And the reason for that is the evidence is going to come in one little bit at a time. And we want you to have the whole picture before you start making up any opinions about the

case. So one way to help you keep an open mind, so to speak, until the close of all the evidence is to ask you not to discuss the case even among yourselves.

And the third rule is really more for the lawyers and witnesses than for you, but just to make you aware of it, they are under very strict instructions to have absolutely no contact with you. So if you are in the elevator and one of the lawyers happens to be there and he or she doesn't even smile or say hello, they're not being rude. They're under very strict instructions to have no contact with you whatsoever.

And finally, every once in a while a case comes along that is the subject of commentary in the press or something like that. I don't know if that will be true in this case or not, but if by any chance you're looking at a newspaper on the web or something and you see something about the case, immediately turn away, turn the page, turn to another program, whatever it is, because, again, we want you to judge this case solely and wholly on what you hear right here in court.

So we're going to swear you in. We're going to take you back to the jury room so you become familiar with it. That's where you'll come in each morning and each afternoon, and then we're going to bring you back in about ten minutes to hear opening statement of counsel before we break for lunch. So we'll swear the jury.

(Jury sworn)

THE DEPUTY CLERK: Please follow me into your jury room.

(Jury excused)

THE COURT: All right. Please be seated, if there is a seat available. Counsel, please be seated.

So to the members of the jury panel who were not chosen, first of all, my congratulations on dodging a bullet. But you're not totally off the hook yet. You should go down to the same room you came, up from on the first floor. And we'll send your cards along with one of you. And, of course, there's still a possibility you may be chosen for another jury.

But I want to thank you all for being available for jury service. We never know how many prospective jurors we will need, so you have the gratitude of the Court, and you are excused at this time.

(Jury panel excused)

THE COURT: All right. I know we have some summer interns here from Fried Frank. Welcome, and I'll have an opportunity to talk briefly with you in a minute.

Since we're right on schedule, I will allow, for opening statements, counsel to have up to 40 minutes, if they want it, but not 41.

Now, there was one other matter concerning opening statements that the SEC wanted to voice.

MR. INFELISE: Yes, your Honor. We have one objection

to one of the demonstratives that Mr. Stoker indicates he's going to --

THE COURT: Yes. Can we put it on the screen?

MR. INFELISE: Please. And specifically, we are objecting to the left box, which identifies a various army of lawyers. As Mr. Stoker has admitted, and conceded, we are not raising advice of counsel and, in fact, have conceded that there was no opinion upon which he could have relied. And I raised this during the motions hearing, your Honor.

But having said that, I don't understand the relevance of identifying seven different law firms on this demonstrative. Certainly they were not investors. Certainly they're not the individuals buying the protection on CDOs. The only thing this does, your Honor, is, again, raise the very specter that I was concerned with.

THE COURT: I agree. Let me hear from your adversary.

MR. KEKER: Your Honor, this is a negligence case. You said last week that custom and practice was important. One of the ways you determine negligence and custom and practice is to look at the context in which work is being done. The point of this slide, and this is the only point of the slide, is that this was a transaction in which many, many people and their lawyers were looking, studying, asking questions, doing due diligence. And when you think from the point of view --

THE COURT: Unless your client had any reason to

believe that the specific acts that he took and the specific communications that he made were shown to lawyers for their opinion, and I've seen no evidence of that --

MR. KEKER: That's just not the point.

THE COURT: I understand it's not the point, and that's why we're excluding this. That whole box will be removed.

Anything else?

MR. INFELISE: And one other matter, your Honor, before we begin examination. Since the Court ruled that we will be allowed to lead the witnesses we call, at least the ones we've identified as identified with an adverse party, is Mr. Keker then restricted to doing direct examination during his what otherwise would be cross-examination?

THE COURT: No.

MR. INFELISE: All right. Thank you.

THE COURT: He can lead as well, those witnesses we're talking about.

All right. So if counsel wants to take a five-minute break while I talk to the summer interns from Fried Frank, you're welcome to. And just be back here in five minutes.

(Recess)

(Continued on next page)

(In open court; jury present)

THE COURT: So ladies and gentlemen, we're about to hear the opening statements of counsel.

Now, I want to caution you that nothing that counsel says is evidence. The evidence is going to come from just three sources: There will be witnesses who will testify; there will be exhibits, mostly documents that will be received in evidence; and every once in a while the parties may have what they call a stipulation, where they agree that a particular fact is true and you can consider that as evidence. Those are the only sources of evidence.

So why do we even have opening statements? Well, as I mentioned when you were being chosen, the evidence comes in one little bit at a time. And so it may be useful for you to hear the views of counsel as to what they believe the evidence will prove or not prove, as the case may be. This is just their prediction and may turn out to be wrong. They will both, of course, have very different views as to what they expect the evidence to show. But it still may be useful for you to have this kind of road map as to what each side thinks they will show or will not show, as the case may be.

So, the party that bears what is called the burden of proof -- and I'll explain that to you later, but basically it means that the party that has to show that it's more likely than not that the facts that they assert are true are true --

is the SEC. So we will begin with the counsel for the SEC.

MR. INFELISE: Thank you, your Honor.

Ladies and gentlemen, this case is about how this defendant, Brian Stoker, misled investors when he encouraged them to put their money into an investment that he and his employer, Citigroup, intended for Citigroup to be able to make a profit at the expense of those same investors.

You'll see evidence that on February the 28th of 2007 a security that was called Class V Funding III came into existence. Class V Funding III, or Class V III, was what was known as a collateralized debt obligation, CDO for short. And you'll see evidence that that CDO had assets that were valued at over $1 billion.

You'll also see evidence that several investors put money into that investment, approximately $850 million. And the evidence will also show, ladies and gentlemen, that on November 19, 2007, barely nine months after it came into existence, Class V III was declared in default and the investors lost almost every penny they put into it.

We will demonstrate, ladies and gentlemen, that the defendant, Brian Stoker, deceived and defrauded investors to put their money in a Class V III. We'll show that in three ways: First, we'll present evidence that Mr. Stoker helped devise Class V III, and he did that knowing, or he reasonably should have known, that it was intended by Citigroup as a means

of profiting at the expense of the very investors who they were soliciting put money into it.

We will also show that Mr. Stoker, the defendant, participated in preparation of the offering materials for Class V Funding III, and that at the time he did that, he knew or reasonably should have known --

THE DEPUTY CLERK: Is someone standing on a wire maybe?

MR. INFELISE: That he knew or reasonably should have known that it contained untrue statements of fact and omissions of material fact about two critical items. The first was that Citigroup had a significant role in selecting assets for Class V III.

THE DEPUTY CLERK: I think I'm going to have to turn off the wireless mic.

THE COURT: It typically is someone at the first table who -- there are wires, unfortunately, going under your feet, so just be careful. Let's try it one more time.

MR. INFELISE: Okay. From the top, as I said, we will show that there were two things that Mr. Stoker did not -- was not disclosed about Class V Funding III: The first was that Citigroup played a significant role in selecting the assets that went into Class V III; and second, that Citigroup then placed a $500 million bet that those very assets would not perform well, they would perform poorly; in fact, that they

would default.

And third, you're going to see evidence or hear testimony and see evidence that the defendant then used those marketing materials that he knew or reasonably should have known contained untrue statements and omissions of fact to solicit investors for Class VIII.

As I said, the investors in Class V III lost almost everything they put into it, but there were some winners. One of those winners was Citigroup, defendant's employers. And they won in two ways: First, they were paid a fee for putting the deal together, and in marketing, that fee was approximately $34 million.

But Citigroup was a big winner for another reason. And even though the investors who put their money in Class V III lost every penny, Citigroup made hundreds of millions of dollars, because they made a bet against the performance of the very assets that they asked to be included in that security.

And Citigroup made this bet by taking what was known as a short position on those assets. And that short position basically meant that if the assets at Citigroup recommended for inclusion performed poorly, that they defaulted, they could make $500 million.

And Citigroup didn't make a $500 million bet on just any assets. They didn't pick those assets randomly from the

ones that went into Class V III. What they did was they made that bet against the very assets that they recommended for including. Those are the assets they bet against.

And you'll hear evidence, ladies and gentlemen, that the assets that Citigroup selected defaulted at a higher rate than the other assets they could have selected. And they defaulted faster than the other assets it could have selected and the other assets in Class V III. The result was that Citigroup made hundreds of millions of dollars and the investors lost almost everything.

Now, you are not being asked to determine Citigroup's liability for their role in Class V III, and you're not being asked to determine whether anybody else is liable for their role in Class V III. The question to you, ladies and gentlemen, is if Brian Stoker violated security laws because of his role in Class V III.

This case is about Brian Stoker. This case is about how the defendant helped put together, helped structure Class V III, even though he knew or reasonably should have that it was intended by his employer, Citigroup, to profit at the expense of the investors who would invest in that security. And this is about how Brian Stoker as the deal manager for Class V III did not ensure that the offering materials, the materials used to market the CDO to investors, adequately explained the two facts that I have stated before: First, that

Citigroup had a significant role in selecting assets for this security; and second, that they then took, placed a $500 million bet against the performance of those very assets. The result, ladies and gentlemen, is that Class V III operated as a fraud on investors. And we're asking you to hold the defendant responsible for that.

Now, if we could, Ms. Peterson, Mr. Feller and I would put one witness on that witness stand and they'd tell you the story of this case from the beginning to the end. Unfortunately, we can't do that for several reasons. The first is the law requires that a person can only testify from their own personal knowledge. And second, some of the evidence that you're going to receive is not in the form of testimony. It's contained in documents. And third, because of the availability of witnesses, the evidence might not be presented to you in the most logical order.

But we will prove our case, ladies and gentlemen, first from the testimony of live witnesses who will take the stand, and they will testify to you from their personal knowledge and their involvement in Class V III.

We will also produce documents, including e-mails, about Class V III.

And third, we're going to present the testimony of three experts: The first of those is Professor Dwight Jaffee. Professor Jaffee is presently a professor of finance and real

estate at the University of California at Berkley.

Then we will present testimony from Mr. Robert MacLaverty. Mr. MacLaverty has 19 years of Wall Street experience.

And finally, you're going to hear from Dr. Jonathan Neuberger. Dr. Neuberger is an economist who has spent 20 years analyzing and modeling financial instruments.

As I said, Brian Stoker was an employee of Citigroup. And in 2006/2007 he was assigned to what was known as the CDO group. Now, the CDO group had two coheads. And one of those was Mr. Nestor Dominguez. You're going to hear testimony from Mr. Dominguez in this case. And under Mr. Dominguez are three sections, or what they call three desks.

The first desk is called the syndicate desk. The head of that desk was Mr. Shalabh Mehrish. Mr. Mehrish will also be a witness in this case.

The second desk in the CDO group was what was known as secondary trading desk. The head of that desk was Mr. Donald Quintin, often referred to as DQ. And one of the individuals that worked for Mr. Quintin was an individual by the name of Brian Carosielli. Both Mr. Quintin and Mr. Carosielli will testify in this case.

And the third desk was the structuring desk. The structuring desk was headed up by Mr. Darius Grant. Mr. Grant will also be a witness in this case. And he was immediate

supervisor of the defendant, Brian Stoker.

Brian Stoker was a director at the structuring desk, and he was assigned as what was known as the deal manager for various CDOs that CDO group was putting together. And as the deal manager, he had overall responsibility for that particular CDO. So even though other individuals who worked on the structuring desk may have been assigned to work on it, ultimately the responsibility for that CDO was Mr. Stoker's.

And included in his responsibilities as a deal manager, Mr. Stoker was responsible for executing the deal and also the preparation of the offering materials, the documents that were actually used to market the CDO to investors. And you're going to hear testimony that they used primarily two documents to do that: One what was known as a flip book and the other was called the offering circular.

Ladies and gentlemen, as it's clear at the heart of this case is a CDO called Class V III. As I said, it was what was known as the CDO. And in very simple terms, CDO is simply a security that contains other assets. You could think of it as a bucket. CDO is a bucket, and other assets are put into it.

Now I'm not going to try to explain it to you. CDOs, I will leave that to Professor Jaffee. He will explain what a CDO is and how it works in clear, simple terms. But I'd like to take this opportunity to just give you a brief overview of

the CDO that's at issue in this case, Class V III.

Over $869 million of the assets in Class V III were what were called synthetic assets. That simply means that the CDO didn't own them. They had a pool of what was known as referenced assets.

Now, in a synthetic CDO, such as Class V III, there's two major parties. The first is what's known as the protection buyer. And the protection buyer basically places a bet that certain assets in a referenced pool won't perform very well; in fact, bets that they will default. And they do that by paying a premium to the CDO. And in return, the CDO agrees that the protection, what's known as the protection seller agrees that it will pay to the protection buyer the total amount of protection they purchased if, in fact, the CDO defaults. And since ultimately the investors' money is used to make that payment, actually then the investors are the protection sellers.

The evidence will show, ladies and gentlemen, that, as I said, the defendant helped devise Class V III when he knew or should have known that, in fact, it was going to be used by Citigroup as a means of profiting at the expense of investors.

You're going to hear evidence that in the fall of 2006, Citigroup began to see an increased demand for protection on CDOs. There were a lot of protection buyers out there. But they weren't interested in buying protection for just any CDO.

These protection buyers for the most part were looking for particular groups of CDOs. And one of those groups was known as constellation CDOs. They were called that because they were named after the constellations, like Virgo or Orion.

Another group for which there was a strong demand were what was known as president CDOs, or president deals, particular three names: With Jackson, Buchanan and Baldwin. I don't know who Baldwin was; I didn't know that was a president. But those are the three names: Jackson, Buchanan and Baldwin.

And as a result of the demand that Citigroup received, the CDO group decided they were going to structure, put together a CDO for two reasons. The first reason was to meet that demand, to put together a CDO, for investors to market it. That was their role.

They had another reason. The reason was Citigroup wanted to put this together so it could purchase protection on some assets, so Citigroup could place a bet against the performance of those assets.

And you're going to hear evidence, ladies and gentlemen, that the defendant, Brian Stoker, knew that or was negligent in not knowing that. In fact, you're going to hear evidence that in early October the defendant was approached by Donald Quintin from the secondary trading desk and asked to structure a CDO for the specific purpose of allowing Mr. Quintin to buy protection on certain assets.

Then you're going to see evidence that Mr. Stoker began to act on that request almost immediately. You'll see evidence that on October the 23rd of 2006 Mr. Stoker put together an analysis showing what profits Citigroup could make from shorting, or taking a short position, or buying protection on zero, 50 and 100 percent of the assets in the CDO.

You're also going to see evidence that on -- before that on October 23rd Mr. Quintin actually sent a wish list of assets, 21 names, to Mr. Stoker indicating he wanted to buy protection on these assets.

And on November the 1st, 2006, you'll see evidence that that -- Mr. Quintin's wish list was forwarded from the defendant to an individual by the name of Sohail Khan. Mr. Khan will testify. He was a salesperson at Citigroup who actually covered certain clients. And on that same day, the evidence will show Mr. Khan forwarded that list to Credit Suisse, and Credit Suisse referred to it in this case as CSAC. And the reason Mr. Khan sent that to Credit Suisse was because Citigroup wanted CSAC to act as the asset manager for the CDO.

And the reason they wanted that is because they knew, they knew that it would be easier to market this to investors if they said they had an asset manager, because investors wanted an asset manager in the CDOs. They wanted someone independent who actually picked the assets. They wanted someone who didn't have a stake in whether those assets

performed well or poorly to pick them for them. In fact, you could say that perhaps the most important role of the asset manager was to select the assets that were going into a CDO.

You'll hear evidence, ladies and gentlemen, that at this time frame defendant knew or reasonably should have known that Citigroup didn't want CSAC to pick all the assets. And you'll see evidence that Stoker believed, in fact, that CSAC would not pick all the evidence. And some of that evidence is from the very procedures that were used to get that wish list from Donald Quintin to their potential asset manager, CSAC.

You'll hear evidence that it was not the normal procedure for Mr. Stoker to send a list of potential assets to someone in sales. You'll hear evidence that it was not the normal procedure for Mr. Stoker to make recommendations of specific names that would go into a CDO. In fact, you'll hear evidence that Mr. Stoker normally did not really have any concern with the specific names that went into an asset.

But more than that, ladies and gentlemen, you'll hear that two days after Mr. Stoker -- that list was sent by Mr. Stoker to Mr. Khan, November the 1st, and forwarded to CSAC, Mr. Stoker stated expressly that he didn't believe CSAC would pick all the assets. Because you'll see, ladies and gentlemen, an e-mail dated November 3, 2006. And in that in response to an inquiry from his supervisor, Darius Grant, who asked the defendant whether or not this CDO was going to get

done, defendant said this: I hope so. This is DQ's prop trade. Don't tell CSAC. CSAC agreed to terms, even though they don't get to pick the assets.

Now, you'll hear further evidence on December the 21st, 2006, CSAC responded or sent a list of approximately 127 potential assets back to Citigroup. And you'll have a chance to look at that list and see what type of assets are included and the names of those assets.

You'll hear further evidence, ladies and gentlemen, that on January the 8th, 2007, Citigroup responded to CSAC and said, here's 25 names that we want to purchase $250 million of protection on. On that same date, in fact, within hours, CSAC acquiesced, and those 25 assets ended up in a portfolio of Class V III.

You'll also see evidence that on January the 12th, 2007, Citigroup told CSAC we want to purchase another $250 million for protection on those same 25 assets. And it was done.

(Continued on next page)

MR. INFELISE: Now, Mr. Stoker's involvement in Class V III didn't end when Citigroup had finished its $500 million bail. You'll see evidence that as the deal manager for Class V III, Mr. Stoker participated in preparation of the marketing materials. In fact, the evidence will show that he was basically the focal point for that information.

And you'll hear evidence that the standard practice at this time, early 2007, when Citigroup was putting together one of these CDOs, and it would kind of put together the offering materials, they would look to a deal that they had already done, take those documents, and use them as a format or a template for the new deal. But someone had to make sure that if there was any differences in the deal, it would be noted. So if the new deal wasn't the same as the old deal, then the offering materials should reflect that. That was the defendant's responsibility. The evidence will show that, in fact, he was tasked with that.

You'll have a chance, ladies and gentlemen, to look at the new documents that were used to market Class V III, the flip book, the offerings circular. And you'll see what they do say is that CSAC was the asset manager. And they say repeatedly that the asset manager selected the assets for its CDO. What they don't say is that Citigroup played any role in selection of any assets. And they don't say that Citigroup then bought $500 million protection on those same assets.

When you're looking at the offering circular in the flip book during your deliberations, we'd ask you to think about the statement that Mr. Stoker made back on November the 3rd, and compare what he said with what was in the offering circular. And as you'll recall, what he said about this was CSAC agreed to the terms, even though they don't get to pick the assets.

Then look at the offering circular. For example, Page 108, where there's a description of what is being said about selection of assets. And it says the manager will select the portfolio of eligible collateral debt securities to be acquired by the issuer.

And you'll also see evidence, ladies and gentlemen, or hear testimony, that the defendant actually did make some edits or proposed changes to the offering circular for Class V III. He made no changes to reflect that Citigroup had a role in selecting assets. And he recommended no changes to reflect that Citigroup had, in fact, taken a $500 million position, a short position, on those very assets.

The result, ladies and gentlemen, was that the flip book and the offering circular did not disclose information that any reasonable investor would want to know before they invested in this security, or at least how much they were going to invest.

Again, Mr. Stoker's involvement didn't end there.

You will hear evidence that in addition to his work on putting together Class V III, creating it, and his role in preparing the documents, the offering materials for Class V III, he also had a role in marketing. And even though he had information that Citigroup participated in selection of the assets, and even though he knew that Citigroup -- or reasonably should have known that Citigroup had made a bet against those assets, and even though he knew those offering circulars didn't disclose that, the evidence will show that the defendant actively marketed this CDO to investors.

You'll see evidence that on February the 6th, 2007, he sent an email to potential investors, along with the flip book for Class V III. And in it he said: Here's a top-of-the-line CDO squared for you.

You'll also hear evidence that on February the 12th, 2007, the defendant sent a draft of the offering circular to David Salz at Ambac Financial. Ambac ultimately became the largest investor of Class V III, to the tune of $500 million.

Ladies and gentlemen, we're confident that when you've had a chance to hear all the testimony, had a chance to look at all the evidence, you will find by a preponderance of the evidence that we have proven that Brian Stoker made untrue statements and material omissions to investors; and that he knew it was negligent not knowing that those statements were untrue; and that there were omissions of material fact; and

that he obtained money or property by using those statements.

We're also confident you'll find by a preponderance of the evidence that Defendant Stoker played a central role in the creation and marketing of Class V III; and that he knew, was negligent in not knowing, that that security, Class V III, would operate as a fraud upon investors.

Thank you.

THE COURT: Thank you very much.

Now we'll hear from counsel for the defendant.

MS. KEKER: Good morning again, ladies and gentlemen.

The SEC showed you one email twice. Their entire case depends on that email. That's the CSAC agreed, even though they didn't pick the assets. It's dated November 3rd, 2006.

The evidence will show that at that time at Citigroup and outside of Citigroup, a lot of ideas were being explored about putting together a deal to take advantage of all the demand for buying and selling in this CDO market. Those ideas in November, the evidence is going to show, came to nothing. Absolutely nothing. Later -- the deal fell apart. All those deals fell apart.

Later, in December, another deal did come together, and that's the deal between Credit Suisse Alternative Capital, which we're calling CSAC, as the manager, and Citigroup, the bank. That deal was for Citigroup to pick the assets of a CDO squared. We'll get into what the difference between that is,

of a CDO squared. And on December 21st, 2006, that's what happened.

CSAC sent over a list of 125 CDOs, because a CDO goes into the -- what goes into that bucket in a CDO squared or other CDOs, said we can work with any of these; we're willing to manage any of these. They are all CDOs that we worked with before, that we know, that we've analyzed. We'll do that. And later, that became Class V III. The deal was signed up finally on January 10, 2007.

Nothing emphasizes more Judge Rakoff's admonition to keep an open mind until you've heard all the evidence than what I just told you about that email and CSAC picking the assets. Because the SEC is not going to call the people at CSAC, the three CDO managers that picked the assets. They are not going to call them in their case. You're going to have to wait for our case to hear from the people who actually did that work which they say didn't happen.

That's not the only conflict between what they think the evidence will show and what we think the evidence will show.

And finally, you're going to decide what the evidence shows.

But one of the things is the evidence is going to show that Class V III was not set up to take advantage of a short position or protection buyer position in the housing market or

to bet on defaults or to bet against the housing market because people thought it would fail. Instead, it was set up to take advantage of tremendous demand at that time to be on either side of these bets where there was great risk and great reward for Citigroup customers who wanted to buy one side or other side.

Second, Ambac and the other investors were not misled.

You're going to hear one of the witnesses will be an Ambac person who put together this deal. They have as much access to and they knew as much about these assets as Citigroup did. In fact, a lot of the investors, most of the investors in Class V III, were other CDO managers, like CSAC. The people who were buying and selling for their own account or to put CDOs into their CDO squareds, they owned a lot of them already; they traded in them. There's nothing here about secret or inside information.

And then third, these investors knew that if they sold protection to the CDO, betting that the price would rise, taking what we're going to call the long position, you'll hear this from Professor Jaffee, they knew that Citigroup was on the other side of the bet, in the short position. They also knew that it was customary for the arranging bank to have conversations with the manager about what the market condition was and what we could put into this so that we could sell both sides.

Now, I'm talking about Citigroup. There's a lot of conversation here about Citigroup. But we do agree with the SEC that this is not a case about where you have to decide whether or not you approve or disapprove of Citigroup, whether or not you approve or disapprove of this kind of transaction, Class V III. It's not the bank or the transaction that's on trial here, it is Brian Stoker, this man right here, who, when the events occurred in this case, late 2006, early 2007, Brian Stoker was 35 years old, married with three kids, and he worked on the structuring desk at Citigroup.

You'll hear a lot of evidence in this case about other people, and you'll hear -- and we've already heard some words thrown around like "fraud." But the SEC has brought a negligence case. And the issue in the case is whether or not Brian Stoker did what a reasonable man working in his position with his job, performing his duties in 2007. That's the question you're going -- some form of that question as the judge will give to you at the end.

To understand the case, then, you're going to have to put yourself back to more than five years, to early 2007, late 2006, before the housing meltdown, before anyone knew what was going to happen later, before the financial crisis of 2008. To judge this case, you're going to have to evaluate the world as it was then, and determine whether or not Brian Stoker was reasonable in the way he did his job and understood his

responsibilities and performed them.

If you do that, the evidence is going to show that Brian Stoker acted reasonably; that what the investors knew, what he knew, and they didn't expect to know more about the trading desk's intentions with various positions. His bosses and his colleagues at Citigroup all thought his conduct and their own conduct with respect to this was reasonable and proper.

So going back there, to early 2007, the demand for these synthetic CDOs was increasing, because people had different investors on both sides, had different ideas about what was going to happen to housing. Some people thought the market was going to go up, some people thought the market was going to go down. Brian Stoker didn't know. He bought a house in 2005 which lost money later. Certainly Citigroup didn't know. When the market collapsed, Citigroup was out, lost 40 billion dollars, because they didn't think the housing bubble was going to blow up.

As I said, in 2007, the market for synthetic CDOs was booming. We agree with the SEC about this. The synthetic CDO market is high stakes, high-level gambling. Investors were so anxious to gamble about whether or not the housing market was going to go up or down, that they made up bets. That's what investing in synthetic assets means. You pick a reference asset, and you say, let's bet on it. You take one side, I'll

take the other side. One side bets it will go up, the other side bets it will go down. The side that bets it's going to go up is sometimes called long, or in the lingo of this case, the protection seller position; the side that bets it's going to go down is short, and in the lingo of this case, protection buyer position. They're buying insurance against it falling, the other guy is selling insurance believing that he'll never have to pay off the insurance policy.

When the bets are large, like it was in this case, a billion dollars, a small change in prices can make one side or the other of the bet a lot of money. Banks, the biggest banks on Wall Street, all the household names, arranged these bets for their customers. And they -- for a fee, they got a fee for that. And they participated in this betting.

Now, however you feel about gambling, and some of you may hate it, this was legal gambling. It was known to the SEC; it was known to our Congress.

The evidence will show that there are two sides to every bet. In the synthetic CDO market, for every bet an investor makes, someone has to be on the other side. If there's nobody on the other side, there's no deal. So that someone on the other side -- and this is, I think, an important part of what the evidence is going to show. For a synthetic CDO, the someone on the other side is always, always, always 100 percent the arranging bank, the person -- the bank that's

putting this together. They are on the buying protection side. The reason that it always is the arranging bank is because the investor putting money in to bet the other side wants a creditworthy somebody there. They don't want to have this position turned over to somebody who might not be able to pay. So from the beginning of the CDO to the end of the CDO, the arranging bank is the one that writes those protection payment checks every quarter and sends them to the CDO.

The evidence is going to show now that what the bank does, the arranging bank does with that, bet that it's bought into, protection buying side, the side that has to pay quarterly into the synthetic CDO, that what it does with that bet is its own business. It can do a lot of things. It can offset all or part of the bet so that it's not in the game anymore; it can keep all or part of the bet; it can treat its position as a hedge. The investors don't know and they don't ask and they don't think it's their business what the bank does to keep or sell its protection buying position.

The point is that there's always two sides to the bet, and there's always sophisticated knowledgeable money in the form of banks and their hedge fund customers on the other side of the bet. The investors in this market know that.

Now, why would an investor want to make this bet? The evidence will show that very sophisticated investors in this very sophisticated market believe that there's no such thing as

a bad bet, there's just a bad price.

Think about betting on football. Last winter, for the Giants-Patriots Superbowl, if somebody had offered you even odds, you might say, No, I don't want to take that bet. But as the point spread changes, there may come a point where you say, That sounds better; I'll take that bet.

That's the way it is here.

Some people like to bet on sure things; some people like -- there's no such thing as a sure thing. Everybody knows about that, about gambling. Some people like to bet on long shots.

But what the evidence is going to show in the synthetic CDO market is that the bettors looked at the price -- they called it the spread, the risk versus the reward -- to make their decisions. They weren't betting that these CDOs would default or fail; they were betting on whether or not the price spread could go up or down. And you could then change that position.

What will the evidence show us about who placed these bets in the CDO market, who were the investors? This is not mom and pop or unknowledgeable people or retail customers. These are the most sophisticated bettors on Wall Street. A firm couldn't invest on CDOs unless they are what the Securities and Exchange Commission calls qualified institutional buyers who control at least $100 million and are

deemed to be capable of making their own decisions.

And here, the specific bettors, buying these notes from the CDO, taking the long position, included Ambac. You're going to hear from a witness from Ambac who billed itself as the global leader in this business with unmatched knowledge of CDOs.

As I've already told you, other CDO dealers who already owned these, owned a lot of them, were putting together their own CDOs. And then finally, most ironically, investors who waited until the market really did seem it was collapsing so that they could get even a better price, some of the investors bought in at when it was 57 cents on the dollar rather than pay par for the notes, waited for them to go down five months or so.

All of them were betting on price. They thought this is a good bet. Every one of these investors and everyone on Wall Street and everybody in this business knew that at this point that the house -- including Brian and people at Citigroup, knew that the housing market had risks. But there was a huge difference of opinion in early 2007 about what would actually happen.

The investors, including Ambac, knew that the hedge funds out there wanted to bet against them. They knew that there were a lot of smart money wanting to take the other side of the bet. They knew that the bank and the manager, in this

instance, Ambac, was told specifically that the manager has consulted with Citigroup and talked about assets to go into the deal and so on. They knew that there was conversation, because you can't do this without that kind of conversation. They knew that Citigroup was the counterparty, and could still be holding a huge position on the other side of the bet.

And Ambac, the biggest investor, doubled down its bet because it waited five months when there was terrible news about what was going to happen, as there was a problem with HSBC, and there's all this bad publicity. In July of 2007 it doubled down, insisting that Citi take the short position so that it could take the long position on these exact same assets for another billion dollars.

That's one side of the bet.

And the investors in this instance, and investors in most CDOs around this time, and all CDOs eventually, ended up losing. They were betting on the spreads.

No one who makes a bet, the evidence will show, thinks that they are going to lose.

Ambac and the other investors made their own investigations, they made their own decisions. They did know that the other side of the bet was equally sophisticated investors, big banks who were putting these things together so that they could make a fee and were going to be the arranging bank on the other side of the bet.

And again, back to football. You can think that you're a diehard sports fan and know a lot, but you got to know on the other side of the bet that you're making there could be another diehard sports fan that's just as smart and knowledgeable as you.

The key thing that the evidence is going to show that the SEC is wrong about and the witnesses are going to tell you that the SEC is wrong about is that when Citi bought protection, it was not betting that the CDO would fail or betting that the housing market would collapse.

Witnesses will explain to you many reasons that you buy protection. You might buy protection if you're an entity like Citigroup because your customers are demanding it; they want you to sell it onto them. Or you think there's going to be a market for it down the road, or you want to make a deal come together so that your bank can get a fee, or to balance another position where you're long.

Everyone in the market knew that all of these trading positions on a trading desk were fluid; that decisions were made on that trading desk day-by-day, week-by-week. Positions might be kept, they might be sold, they might be a hedge against other trading. The investors knew that, Brian Stoker knew that, Brian's bosses knew that. Everyone knew that. The trading desk, thinking and planning about what it was going to do, was neither fixed nor was it public. Trading is

fast-moving. There's jokes about make a decision, and then six seconds later you might change the decision, because the markets move fast. An offer to buy protection today may not hold tomorrow. Every witness in the case is going to tell you that.

The witnesses will also tell you that the SEC, when they talk about this $500 million short position, is -- well, I won't characterize. They are going tell you about this $500 million short position.

In early January, after CSAC selected the assets, Citi said, We'll buy protection on 25 of these assets.

Now, in fact, that trade was a contingent trade, meaningless and valueless if the deal didn't close. And you heard the deal didn't close; the thing came into existence on February 28, two months later.

So what Citi is in is -- they are not in any position because the deal didn't close; you just rip up that position. It didn't become effective until the CDO closes on February 28 and when the CDO gets priced.

And on February 28, when this deal came together, Citi was, in fact, in a long position, not a short position. It still owned $500 million of certain part of the CDO. It hadn't sold another $200 million worth of bonds. So it was 700 million long. And on the day it closed, it was $500 million short. So its net was $200 million long. And starting on that

day and going forward, it traded at various times out of both positions. It was trying to sell the notes to get out of that side. And it was selling the short position on into the summer. So there's nothing static or fixed about the trading desk position.

So let me get back to Brian Stoker.

Where is he in this CDO world? He's on the CDO structuring desk. His boss is Darius Grant. He doesn't sit next to Darius Grant. He's one of four directors below Darius Grant. And in this group there's probably about 30 people. They report to Ms. Warne and Nestor Dominguez. Mr. Dominguez will be a witness in the case.

In the CDO group there's hundreds of people.

And then in the bank, they report up -- you'll hear about Michael Raynes, who's head of global structured credit products. And he reports to global credit markets, fixed income, all the way to the top, to the CEO of the bank.

Now, in the CDO group it's not just the structuring desk. There's two other desks that you've heard about. Mr. Mehrish is head of the CDO syndicate desk. They are the ones who are trying to find out where the market is going, what people are interested in, what investors want. There's the CDO trading desk, which is the day-to-day operation that Mr. Quintin runs and Mr. Carosielli works in. And then not part of the CDO group -- or at least reporting separately -- is

the sales desk which goes out and sells notes.

So the structuring desk makes deals work in the sense that it's their job to make the pieces fit together. These are very complicated deals, and they make the deals work. The syndicate desk checks market interest and gets investors. The CDO trading desk trades day-to-day for customers buying and selling. And the sales desk is the one that goes out and sells the notes that are generated by these CDO squares.

Brian's job, Brian Stoker's job -- excuse me, we're not there yet.

But there's a lot more going on.

There's the investors. I've told you about Ambac. These investors are, as I've said, CDO managers, and they are some of the biggest names on Wall Street; all of them highly sophisticated. There's the asset manager who picks the assets and then manages them during the course of the CDO in case they have to be traded or changed. That was Credit Suisse Alternative Capital, CSAC. And then there are protection buyers.

Remember I said in every instance the arranging bank does 100 percent of the protection buying; but the arranging bank doesn't have to, although it can, keep its position. It can go out on the street and say, Would you like to take my position? And in this case, the people who took some of the position include, as I said, all the biggest names on Wall

Street, other banks.

And then there's the protection seller, who is the CDO squared itself.

So Mr. Stoker's job was to work with others to make these pieces come together, to make the cash flow work, to get the rating agencies like Moody's and Fitch to tell you what they wanted. That's where the SEC says he was unreasonable. They say he was unreasonable when it came to his work on the paperwork.

So let's look at the paperwork.

You're going to see the offering memorandum and other marketing materials. The offering memorandum is this big fat document that was worked on, the evidence will show, over two months. And it only was finalized two days -- on February 26, two days before the deal closed. It was reviewed and edited in various parts by the manager, CSAC; by one of the investors, Ambac, got early drafts of this and suggested changes; by Mr. Stoker, to some extent, particularly in the part that describes how the money will get paid out; and by people working for him; and by other professionals looking at it.

The evidence will show that no one, no one, not the investors, not Mr. Stoker's colleagues, and certainly not Mr. Stoker expected this offering memorandum to provide the confidential trading information that the SEC insists should be in here. The offering memorandum is only supposed to put the

investor on notice of the terms of the deal and generally tell them what the risks are. It doesn't include -- they don't even put the assets in here. They don't list what the assets are. They don't list what the prices of the assets are. They don't list who the investors are. They don't talk in there about who the trading desk went out to and tried to sell it to, and that people said, Oh, I don't like that deal. They don't talk about people who snapped up the deal, or how the market is perceiving the deal. Nobody expected that kind of information to be in this document.

Later, after this -- while it's being prepared, the investors did get a list of assets before the deal closed. Ambac asked all the questions it wanted; other investors did, too. They asked them of CSAC, the manager; they came to Citi and they asked questions. They found out what they wanted to know, including the price of every asset. Brian Stoker, you'll see an email, instructed his colleagues, give Ambac whatever they want; tell them anything that they want to know.

That's what's not in here.

Let's look at what is in here.

Does this document include the fact that the bettor on the short side, on the protection buying side, will be Brian Stoker's firm, Citigroup. This is something you don't have to tell these people; they already know. But does it include it? Yes.

On the offering memorandum, Page 46, you'll find the statement an affiliate of Citigroup is expected to act as the initial CDS asset counterparty for the entire synthetic side of this thing, $869 million, protection buyer. Does it say that Citi's position as the protection buyer might be adverse to the people on the other side of the bet, the investors? In such capacity as swap counterparty, Citigroup may be expected to have interests that are adverse to the interests of the noteholders. What they are saying is they are just on the other side of the bet.

And then they go on to say, as such, a swap counterparty, Citigroup will have no duty to act on behalf of the noteholders, and directly or indirectly may act in ways adverse to them.

Does it say that Citigroup will offset all of its position or keep some of it? Well, yes. Page 88 of this offering memorandum. The initial CDS asset counterparty may provide CDS assets as an intermediary with matching offsetting positions requested by the manager. That happened here with some of it. Or may provide CDS assets alone without any offsetting positions. That happened here with some of it.

Does the offering memorandum say anything definitive about the trading desk's intentions? No.

Will the evidence show that there was nothing definitive about the evidence about the trading desk's

intentions? The evidence will show that.

Nobody expected information about what the trading desk was going to do with its position, who it was going to offset it to, who else was in the market, what it was, how much it was going to keep, when it was going to sell, how long it was going to hold. Nobody expected that information to be in here. In fact, I think I expect the Ambac witnesses to say we didn't ask that; we asked every other question under the sun, but we did not ask that question.

In early 2007, no reasonable person working in this world believed that what the arranging bank CDO trading desk did with its initial position was public information or something that ought to go into this offering memorandum. There's no reason, the evidence will show, that Brian Stoker should have thought otherwise. The evidence is going to show that what the SEC is attempting -- is simply attempting to ignore what was reasonable back then and get you to judge somehow in different light of today.

Another area that I mentioned a little bit at the beginning, let me quickly go through that.

Where the evidence will conflict with what the SEC told you is who picked the assets.

The SEC claims that this offering memorandum is false because it says CSAC is the manager and picked the assets in Class V III. The offering memorandum does say that, because

it's true; manager will select the portfolio. The manager in that sentence is defined clearly as CSAC.

The SEC has pointed to these emails -- or, excuse me, let me show you who actually wrote this. The manager, who is CSAC, wrote the section about the manager, and says the information appearing in this section has been prepared by the manager, CSAC; it has not been independently verified, da, da, da, da, da, da. That's from Brian Stoker's point of view working on this. He gets the manager section from CSAC; they wrote it. And they, you'll find out when you hear from the witnesses, stand by it. They selected the assets.

The SEC has pointed to and will continue to point to emails back in October and November of 2006 to support its position. But as I told you, the evidence will show that what was discussed then was not what actually happened in this case. In the fall, there's no deals; there were ideas. A lot of terms were uncertain, including, very importantly, what role, if any, CSAC would have. Was this going to be a managed deal, or was this going to be some kind of deal where CSAC would come along after Citi picked some assets and then manage the assets after that, or would CSAC have no role. All of those were ideas simply being explored.

When Class V III came together in very late 2006, it was agreed that CSAC would act as manager and pick the assets, and they did.

And suffice it to say that when CSAC, which was at the time a very respected CDO manager who Brian Stoker had worked with before, and had a reputation, CSAC had a reputation on the street, when CSAC said that we picked these assets, Brian Stoker didn't have any reason to doubt it.

So, in closing, over the next couple of weeks you're going to be hearing a lot of evidence about the CDO market and how it works. I hope you'll find it interesting. I beg you to follow the admonition to keep an open mind until you've heard all of the evidence, because our case comes last.

And please keep in mind also the question -- and Judge Rakoff will give the instructions -- but generally the question that you'll be ultimately asked to answer, as I said, was not how do you feel about Citigroup, how do you feel about this kind of high-level stakes gambling. Instead, the question is whether or not Brian Stoker acted reasonably in the performance of his duties as things were back there in January/February 2007.

Thank you very much for your attention, ladies and gentlemen.

THE COURT: Thank you very much.

All right. Ladies and gentlemen, we're going to give you your lunch break at this time. And why don't you be back hear, say, ten minutes before 2 o'clock. And we will then have our first live witness.

Remember not to talk about the case.

Have a very good lunch.

We'll see you at ten minutes to two.

(Jury excused)

THE COURT: Let's take up some matters.

Let me first say, just by way of comment, that I thought those were excellent opening statements by both counsel. I never cease to be thrilled by the process known as a trial where instead of allegations, posturings, public relations, or what have you, we finally get a chance, through the marvelous institution of the jury trial, to find out what the truth is in any given controversy.

So we're off to a good start.

I note for the record that counsel for the defendant had handed up from their proposed instruction a preliminary instruction on the jury use of electronic technology. And I gave, in substance, that instruction. I didn't give it in the words that defense counsel had requested, because that proposed instruction, which comes from a volume I'm not familiar with, *O'Malley's Federal Jury Practice*, basically says: Whatever you do, don't go looking for information outside. Now, I tell you again, whatever you do, don't ever go looking for information from outside sources. Ladies and gentlemen of the jury, please don't go looking for certain information from outside sources. I'm telling you, please, please don't go looking for

information from outside sources.

Human nature suggests that that instruction is a guarantee that the jury will go looking for information from outside sources. So I prefer to give them a more low-key version, but I did give the substance of the requested instruction.

I also take the very great liberty of mentioning to defense counsel, for what it's worth, that while, of course, I'm happy to get proposed instructions from any source, the preferred instructions in this district, more often than not, come from the *Sand Book*, Judge Sand being one of the very great judges of this Court. And you'll see that there are also some coauthors on that book.

So, anyway, in terms of the three submissions that were filed by the defense over the weekend, all ones that I had permitted, I saw two of them when I came in over the weekend; I didn't see the third till this morning. So it would be helpful in the future for both sides, if you're filing something, to also send a courtesy copy to chambers by fax, or you can email it. My law clerk will give you his email address. That way I won't have to go look and see if something has been filed.

With respect to the first of those submissions, which was the election now made by the defense that, in consideration of the fact that the plaintiff will not be permitted to put Mr. Stoker's deposition and other admissions on its direct

case, because Mr. Stoker will be taking the stand as part of the defense case and could be confronted with those admissions then, Mr. Stoker has agreed to withhold the filing of any motion for judgment as a matter of law until the close of the defense case, close of all the evidence, in effect. So I thank defense counsel for making that clear on the record.

With respect to the statements by Mr. Martens, I asked defense counsel, having preliminarily viewed that those statements would not come in, just so the record is clear, I allowed the plaintiff to put in evidence of intentional acts by Mr. Stoker, even though this is a negligence case, because, in the Court's view, if one intentionally disregards one's duty of care, then *a fortiori* one is at least negligently disregarding his duty of care. So I don't see any reason why that shouldn't come in as proof of negligence.

The defense thinks, Well, if that proof comes in, we should be able to introduce Mr. Martens' statement to the Court in connection with the Citigroup parallel proceeding to the effect that he had reviewed tons of evidence and believed that the commission believed that there was no evidence -- that they could not bring a case for intentional misconduct, but only for negligent misconduct. And I ruled that out on a number of grounds:

First, it was not judicial estoppel, because the Court didn't rely on it; second, it didn't purport to be a statement

about each and every item of evidence in the case as an overall statement of what Mr. Martens believed the overall charge could support; third, Mr. Martens had subsequently changed his mind and now believed that a case could be brought for intentional misconduct; but, fourth, it seems to me and still seems to me totally irrelevant.

The charge here is negligence. Mr. Martens said the charge, in his view, should be negligence, in his initial statement. As I say, he didn't make any comment about any given item of evidence or how that could be proved. And it does not follow from an allegation or from a summary statement that overall the commission believes it only charged negligence, that the commission is then a straightjacketed against putting in evidence of intentional misconduct on any particular item that may bear on the overall determination of negligence.

Nevertheless, I allowed defense counsel to put in a brief, and I asked them if they could find a case in which evidence of this kind had been admitted. I carefully reviewed their submission. They did not find a case exactly on point, but they found some in the kind of general area. But I think a close reading of those cases, particularly the Second Circuit's cases, if anything, is more supportive of the SEC than of the defense.

The gist of almost all the cases cited by the defense

in the memorandum was that the statement of Mr. Martens constitutes the hearsay exception under Rule 801, and, therefore, cannot be excluded as hearsay. And as we discussed on Friday, that only gets them partway. The fact that something is not hearsay doesn't mean it's admissible, if, for example, it's not relevant. So many of the cases that they relied on were, in the Court's view, beside the point.

I thought the most interesting decision, the one that was only cited in passing in the defense case, was *United States v. McKeon*, 738 F.2d 26 (2d Cir. 1984).

The issue in that case was whether an opening statement made by defense counsel at defendant's second trial was admissible in defendant's third trial of the same charges as an admission of a party. I think that's a long way from the situation we have here, as was true of most of the cases cited by the defense submission.

But what the Court there held was, quote, We believe that prior opening statements are not per se inadmissible in criminal cases, but, quote, we are not willing, however, to subject such statements to the more expansive practices sometimes permitted under the rule allowing use of admissions by a party opponent, closed quote.

And it goes on at great length in the very learned opinion by Judge Winter to explain why the kind of automatic -- well, statement, like a statement of a co-conspirator in a

criminal case, it's not hearsay, it comes in if it's even tangentially relevant, so forth, that that very broad view is not, in the Second Circuit's view, to be taken on these kinds of statements made by counsel either in the *McKeon* case in opening statement or in our own case in a hearing before the Court concerning another party.

So without belaboring the point further, the Court adheres to its previous determination.

The final submission by the defense was in support of their motion to exclude evidence of Mr. Stoker's compensation.

What had emerged on Friday was that the SEC maintained that Stoker's -- that the scheme could be said to have obtained money or property either because Mr. Stoker, as a Citigroup employee, made money by fraud for Citigroup, or made money by fraud all of these -- just the allegations, of course -- made money by fraud through increased compensation. We had a little debate about whether the compensation was fixed or not, and its state and so forth.

But then the defense said that even if it comes in for that purpose, the amount should not come in. And his general compensation level should not come in because we're talking about a million or $2 million of that level, and that could be prejudicial.

So I considered further briefing on that.

I adhere to the ruling stated earlier this morning

that that is allowed; his compensation can come in.

I think, first of all, the magnitude itself, it's relevant. And the jury can well appreciate that one would be tempted to be less careful, or, in effect, more negligent, in taking actions where one was motivated to get increased compensation by forging ahead with the carefulness required by law. And the amount really bears on how strong that motivation is.

And, on the other hand, I did not find it to be prejudicial.

We have an excellent jury. The jury clearly has people who have a wide range of general life experience, including a juror with rather direct experience that the Court allowed to remain on the jury over plaintiff's objection. And those folks, if they think about it at all, will have no problem placing this compensation in the context of the much larger figures involved in the deal in the compensation of other people and so forth.

So I do not see any prejudice from this, and I think it is directly relevant.

That's all that I had.

Is there anything either counsel wishes to raise?

MS. KEKER: Yes, your Honor.

We haven't done exhibit objections, the 902 certifications, and we have objections to Professor Jaffee's

slides. Of those, Professor Jaffee's slides, maybe the most immediate, I suppose, he's going to be the second witness --

THE COURT: We will take that up this evening.

From all your predictions, we're not going to get to him, but we will complete the first witness, if everyone's --

MS. KEKER: I think we'll get to Jaffee today. If you start at 2, I think Mr. Dominguez will be done by 4 probably.

THE COURT: Okay. Well, if that's true, then we'll take this up -- do you want to come back -- I mean it's your lunch. If you want to come back at 1:30, we can take it up then; but, alternatively, we can take it up at the mid-afternoon break, which typically comes at 3:30.

MS. KEKER: Mid-afternoon break is perfect. That's fine.

Thank you.

THE COURT: All right.

MS. KEKER: And then the other -- I mean at some point --

THE COURT: We can take the rest of them this evening.

MS. KEKER: Fine.

THE COURT: Anything from plaintiff's counsel?

MR. INFELISE: No, your Honor.

THE COURT: All right.

(Luncheon recess)

(Continued on next page)

AFTERNOON SESSION

2:10 p.m.

(In open court; jury not present)

THE COURT: Before we bring in the jury, let me just mention our technical people have determined that the reason we had all that interference this morning had nothing to do with anyone stomping on any wires. It was because at least one person at counsel table had their cell phone on. So if there is anyone who has a cell phone, and I believe you all do -- at least I signed lots of orders to allow you to -- make sure they're off. That doesn't mean on silence; that means off, totally off.

All right. Let's bring in the jury. Let's get the first witness on the stand, please.

MR. KEKER: Can we have an instruction like in the theater, please turn off all your cell phones?

THE COURT: That's always an invitation for someone to keep it on, right?

Let's get the witness on the stand, please. Counsel, let's get the witness.

MS. PETERSON: Yes, sir.

(Continued on next page)

(In open court; jury present)

NESTOR DOMINGUEZ,

called as a witness by the Plaintiff,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. PETERSON:

Q. Good afternoon, Mr. Dominguez.

Can you please tell us where you are currently employed.

A. I'm currently employed at Carlson Capital, LLP.

Q. And what is your position at Carlson Capital?

A. I'm the head of the credit investments business there.

Q. And what is a credit investment?

A. We invest in bonds and credit sensitive instruments; so bonds, stocks in some cases, options on bonds and stocks, convertibles for pensions and endowments and private individuals.

Q. All right. Thank you. Prior to Carlson Capital, where did you work?

A. I worked at Citigroup.

Q. And when did you begin working at Citigroup?

A. 1993 I joined Solomon Brothers, which then merged with Citigroup. So from 1993 into successor organizations, I believe that merger was in 1999.

Q. And in the 2006 to 2007 time frame you were an employee of

Citigroup, is that right?
A. That's right.
Q. What position did you hold at that time?
A. I was the cohead of the global CDO business.
Q. And in this same time period, 2006 to 2007, Citigroup was one of the leading global originators and traders of CDOs, is that right?
A. That's correct.
Q. Are you familiar with the term league tables?
A. I am.
Q. Can you tell us what league tables are?
A. League tables are a tabulation of origination activity among the major dealers. It's a score card to see how much volume certain institutions have -- certain institutions have originated in the course of the year.
Q. And in the fall of 2006 do you recall what Citigroup's position in the league tables was for CDOs?
A. I don't.
Q. Now, as cohead of Citigroup's global CDO business, what were your duties and responsibilities?
A. My duties were overall management. That included risk management of trading positions, personnel issues, strategic initiatives, overall business development.
Q. Were you responsible for hiring and firing within this CDO business?

A. I was.

Q. And now when you say Citigroup's global CDO business, what does that consist of?

A. We had people to work for us in Hong Kong, London and New York, probably totaling -- approximately 100 people between those three centers, with New York being the largest, then London, then Hong Kong was primarily a marketing arm.

Q. And what did the global CDO business focused on the US New York office, what did it do?

A. Well, our business model was a originate and distribute model, meaning we had individuals who spoke to investors, determined what types of CDOs they would like to buy, they would buy, at what prices they would buy those, and then originated those transactions for distribution. That was basically the business.

Q. How was Citigroup's CDO business organized in the US?

A. There was three sub-business units within the business in the US. There was the structuring desk. There was the primary syndication desk. And there was the secondary trading desk. Those were within the three big sub-business units.

Q. And the structuring desk managed the deal execution and marketing process of CDOs, is that right?

A. It's primarily a deal execution process. They were involved in marketing, but that was not their primary responsibility either. It was really managing the entire deal

execution process from really soup to nuts.
Q. All right. And part of the structuring desk's responsibility was to determine the feasibility of a deal, is that right?
A. That's correct.
Q. And part of the structuring desk's responsibility was the document production process for a deal, is that right?
A. That's correct.
Q. And part of the structuring desk's responsibility was answering specific questions from investors who called in with questions about a deal, is that right?
A. That's correct.
Q. Now, in the 2006 to 2007 time period, who was the head of the structuring desk?
A. Well, the structuring desk in New York was split into two groups: The corporate side, which focused on CDOs, where they had corporate credit risk; and the asset back group, which focused on CDOs that were populated with noncorporate credit risks, so RNBS, CDO squareds, not corporate. And the head of that latter part of the desk, that is, the ABS part of the desk, was Darius Grant.
Q. And did you supervise Mr. Grant?
A. I did.
Q. Are you familiar with an individual named Brian Stoker?
A. I am.

Q. Who is Mr. Stoker?
A. You want me to point him out or --
Q. No, I just want you to tell us how you know Mr. Stoker.
A. Brian Stoker was a -- say senior structuring person on the ABS side of the desk reporting to Darius, directly reporting to Darius Grant.
Q. Did you have any supervisory responsibilities with respect to Mr. Stoker?
A. Well, I did, only in the sense -- in the sense that I had supervisory -- indirect supervisory responsibility for everyone globally at some level. And, you know, I spoke to Brian from -- frequently enough.
Q. When did you leave Citigroup?
A. November 1, 19 -- 2007.
Q. And Mr. Stoker continued to work with you after you left Citigroup, is that right?
A. Yes.
Q. In fact, you hired him as an analyst at Carlson Capital, right?
A. That's right.
Q. Now, are you familiar with an individual named Keith Pinniger?
A. Less familiar. I recognize the name.
Q. And who is Mr. Pinniger?
A. Keith Pinniger was a more junior analyst on the ABS part of

the desk.
Q. And did you have indirect supervisory responsibility for Mr. Pinniger?
A. Very indirect.
Q. Who supervised Mr. Pinniger?
A. Really Darius Grant.
Q. Now, Mr. Pinniger was junior to Mr. Stoker on the structuring desk, is that right?
A. That's right.
Q. Now, another of the desks that you mentioned in the CDO business was the primary syndication desk, is that --
A. That's right.
Q. And the syndication desk focused more on developing investor interest for transactions, is that right?
A. That's right.
Q. And the syndication folks would speak to potential investors about an upcoming deal, is that right?
A. That's right.
Q. And investors would relay what types of risk exposures they were willing to take and tell that to the syndication desk?
A. That's right.
Q. And the syndication desk would bring that type of information back to the structuring desk, so together they could see if a deal was feasible, is that right?
A. That's right.

Q. In 2006 to 2007 time period, who was the head of the syndication desk?
A. Again, that desk was split into a corporate side and a noncorporate side. And on the ABS side, the noncorporate credit risk side was Shalabh Mehrish.
Q. Did you supervise Mr. Mehrish?
A. I did.
Q. And the third desk you mentioned in the global CDO business was the secondary trading desk, is that correct?
A. That's correct.
Q. And the secondary trading desk was a market maker for CDOs, is that right?
A. That's correct.
Q. If the secondary trading desk wanted to make a trade in a CDO, did they have the authority to do that?
A. Yes.
Q. Did they need to seek permission from you each time they did something like that?
A. No.
Q. In the 2006/2007 time period, who was the head of the secondary trading desk?
A. Donald Quintin.
Q. Did you supervise Mr. Quintin?
A. I did.
Q. Are you familiar with an individual named Brian Carosielli?

A. I am.
Q. Who is Mr. Carosielli?
A. Brian Carosielli is a senior trader on that desk reporting directly to Donald Quintin.
Q. And did you have supervisory responsibility over Mr. Carosielli?
A. Again, to the extent that I had indirect supervisory responsibility for everyone.
Q. Did the secondary trading desk have any role with respect to the CDO products that Citigroup structured?
A. Can you repeat that, please.
Q. Certainly. Did the secondary trading desk have any role with respect to the CDO products that Citigroup structured?
A. In that feasibility study of whether a deal was feasible, getting color or information from the secondary desk where they were seeing actual transactions was valuable.
And then in the case of CDO squareds, that was the principal trading desk for CDOs. And so they were the -- a sourcing agent for that, very much the same way the RNBS desk was a sourcing agent for ABS deals. And the loan desk was a sourcing agent for loan deals.
Q. All right. Now, you used the terminology "getting color." What does that mean?
A. General market information; you know, this being an over-the-counter market, where there's no organized exchange,

getting information about where transactions had actually taken place, it would be a process of, you know, talking to the people who were actually transacting, because it wasn't -- there wasn't a public quotation system.
Q. All right. And now you indicated that the structuring desk had a role in marketing transactions. Is that right?
A. Yes.
Q. And did that apply to CDOs and CDO squareds?
A. Yes. They assisted in -- in any transaction that the desk was originating, since they were the most knowledgable really about the details.
Q. And now, when preparing to market a CDO, the structuring desk would prepare what's called a flip book, is that correct?
A. That's correct.
Q. And a flip book is basically a PowerPoint presentation that would describe the deal, right?
A. That's correct.
Q. And it would describe the collateral to be included in the deal, correct?
A. That's correct.
Q. And it would describe the asset manager and the asset manager's performance, is that right?
A. Asset manager's performance in prior transactions or related portfolios, yes.
Q. And it would state basically the economic thesis on why the

deal would make sense in the current market, is that right?
A. That's correct.
Q. And the flip book was a marketing tool to be used with investors, right?
A. That's correct.
Q. And potential investors could call the structuring desk to get answers to very detailed questions on the terms of the transaction, correct?
A. That's correct.
Q. Are you familiar with the term offering memorandum or offering circular?
A. I am.
Q. Can you tell us what an offering circular is?
A. I'm sure I'm not going to do justice to it.
Q. In general.
A. Offering circular is the legal document stating the terms of the transaction, no marketing elements in it at all, just the pure facts of the terms of the trade, very dry facts of, this is the deal.
Q. All right. And now each deal or CDO would have a deal manager, is that right?
A. A collateral manager, yes.
Q. In Citigroup's global CDO business, each CDO that was being structured would have a deal manager there, is that right?
A. Okay. Let me just clarify.

Q. Certainly.
A. I used the word deal manager as the structuring person. Each deal would also have a collateral manager that was a third-party asset manager. Which one do you want me to --
Q. Correct. And I'm talking about the structuring person who was the deal manager.
A. Okay. Great.
Q. And the deal manager was essentially the lead structurer for that CDO, is that right?
A. That's correct.
Q. And the lead structurer would have the overall responsibility for getting the deal documents done, is that right?
A. That's correct.
Q. Now, are you familiar with the concept of shorting collateral?
A. I am.
Q. What does it mean to short collateral?
A. Well, to short collateral is -- you borrow a bond and you sell it to someone else; or in the case of a CDO, you're borrowing a bond from one investor and shorting it into -- and selling it to the special purpose vehicle or the warehouse that is set up for the ultimate execution of the CDO.
Q. When a party shorts collateral, they're hoping that the value of that asset declines, is that right?

A. Generally, yes.
Q. And are you familiar with the term shorting collateral as it relates to the CDO products?
A. Yes.
Q. And are you familiar with the concept of shorting into a deal?
A. Yes.
Q. What does that mean, shorting into a deal?
A. Well, often not every piece of collateral was available in the market that day. And so what the trading desk would do, whether it was RNBS desk or the corporate bond desk or the CDO secondary desk, is short into the SPV and take the risk that they would cover later, because by and large -- again, the collateral was by and large illiquid, might not trade that day, might not trade that week. And so in order to acquire the collateral, somebody had to take that mismatch. So quite often you found trading desks shorting at a price and taking the risk that they could cover later.
Q. All right. Are you familiar with the term buying protection with respect to a synthetic CDO?
A. I am. I just want to clarify --
Q. Certainly.
A. Are we talking about the individual collateral or are we talking in one of the tranches?
Q. We can be talking about either. I'm just trying to get the

general concept of what buying protection means.
A. Okay.
Q. And can you tell us what that means.
A. So buying protection is entering into a credit default swap. Where you buy protection in the event of a default, the credit default swap counterparty will compensate you in the event of a default. And for that privilege or for that benefit, you agree to pay an ongoing amount every quarter or every semiannual period. And that ongoing amount will be dependent on the credit risk of the -- on what's called a referenced security, the underlying of the credit default swap.
Q. And when you buy protection, you are considered being short a collateral, is that right?
A. It's economically equivalent to shorting, yes.
Q. And so if you buy protection on a credit default swap, you anticipate that the value of the underlying collateral will decline, is that right?
A. You benefit if the underlying -- if the underlying referenced securities decline, yes.
Q. And that's because if the underlying reference asset declines, the protection will pay off or become more valuable, right?
A. That's right.
Q. And now, are you familiar with the function of an asset manager as it relates to a CDO squared?

A. Yes.
Q. And asset managers manage the collateral pool for the benefit of the investors, is that right?
A. That's correct.
Q. And when structuring a synthetic CDO, did you ever give consideration to whether the asset manager wanted to short collateral into the deal?
A. I did.
Q. And that would -- would you have done a deal where the asset manager wanted to short collateral into the deal?
A. No.
Q. And why is that?
A. As far as the asset manager is concerned, their -- it's inconsistent with an asset manager who has an ongoing responsibility to manage the deal. To be short in one portfolio outside the CDO and long within the CDO, those two situations just don't make sense together. So we -- it didn't come up very often, because collateral managers recognized that. But the time there was discussion, we said no.
Q. And in addition to an asset manager managing the assets for the collateral pool, they select the assets for the collateral, is that right?
A. That's right. Within the guidelines that are preagreed on by the arranger, the rating agencies and the asset managers.
Q. So you wouldn't want the party who's selecting the assets

for the CDO also shorting them, correct?
A. That's correct.
Q. Now, are you familiar with the term adverse selection?
A. I am.
Q. And adverse selection means choosing the worst collateral for a deal, is that right?
A. I wouldn't -- I wouldn't phrase it as the worst, or choosing -- the goal, of course, was to choose the best collateral that met the criteria. Anything other than that was adverse selection.
Q. So would adverse selection be choosing less favorable assets or poor assets for the deal?
A. Yes.
Q. With respect to the CDO transactions that were structured in Citigroup's global CDO business, was adverse selection a concern of yours?
A. It was, on a general -- it was over the years. I wanted to make sure that the collateral managers that were originating the collateral were doing their absolute best to choose assets for the benefit of the transaction in every respect. So I -- you know, from time to time, you know, that was a -- you know, I reminded people that we need to doublecheck those decisions. Even though we weren't choosing the assets, we should have an independent eye and ask any questions, if anything unusual happened. We didn't -- you know, that we thought wasn't

appropriate or wasn't the absolute best assets that were then available in the market.

Q. And you were concerned about monitoring the credits that were in the deals that Citigroup structured, is that right?

A. That's right.

Q. And part of that concern was that you didn't want the worst deals going in, because it would make Citigroup's ultimate takeout more difficult, is that right?

A. Well, that was certainly a part of it. It actually goes beyond that. We had a process, a second-look process. Again, as I just said, the asset managers chose assets, and -- but I think it was incumbent on us to have an independent view, whether from our desk or secondary RNBS desk or secondary loan desk, whoever was the expert in the collateral, to have an independent view is, yeah, this makes sense. So every piece of collateral went through a quick review in that regard.

But certainly because at the end of the day, investors would be doing that same analysis themselves and that affected our takeout.

Q. And which of the three desks on -- in the CDO business did that second look?

A. Well, for CDOs, there was the secondary trading desk. For ABS, collateral. It was the RNBS desk in the mortgage department. And for corporates, it was their respective desk.

Q. All right. Now, earlier you indicated that one of your

responsibilities as the cohead of Citigroup's global CDO business was overall risk management. How did you manage the risk of the global CDO business?

A. Well, the risks were what we call market risks primarily. Our longs and -- long and short positions. I would get daily reports about our positions in New York and London. It was also -- expected and did receive from time to time, whenever we were doing something different or outsized or unusual, such that it created a different risk than we were normally taking, I wanted to be and was notified of that. And if they were sufficiently outsized, for example, I would then alert my superiors. So that was the primary risk management methodology reports.

And then if there were subtleties or deviations from what we've done in the past or any unusual risks, people knew to notify me.

Q. And were there limits imposed upon the CDO business due to the risk issue?

A. There were. Every trading desk at Citigroup had risk limits. And those were a framework, an umbrella under which our desk and every other desk could transact user discretion to transact within their limit structure.

Q. And was that limit a dollar figure of how much trading they could do?

A. In part. There were -- the limits had multiple dimensions.

Clearly a total dollar was one of them, but not the only one. There were a number of adjustments, reweightings of positions, some often dependent on ratings that gave you a weighted -- more of a weighted number. You know, there were a number of dimensions to the risk limits. I can go into more detail if you like.

Q. No, that's fine. Thank you.

Are you familiar with an individual named Murray Barnes?

A. I am.

Q. Who is Mr. Barnes?

A. Mr. Barnes is a -- part of what's called independent risk management, which is a chain that reports into corporate, the corporation, outside of trading.

Q. And did Mr. Barnes have any role with respect to the risk limits of the CDO business?

A. Yes, he did.

Q. And what was his role?

A. Well, his -- he was our risk manager, meaning that he oversaw the risk. And again, if there was anything unusual that he saw, he would call me right away. If we wanted -- conversely, if we wanted exceptions to the risk limits, he would be our point of contact. And then he would -- his job was to understand our business, create these weighted dollar numbers, depending on his perception of the risk, and establish

limits along with discussions with, you know, senior corporate officers.

Q. And now what does it mean to ramp a deal?

A. So ramping a transaction is really an accumulation of collateral. Again, not every piece of collateral trades in the market every day. So you're naturally limited -- when you're acquiring collateral, you're naturally limited to what's trading that day. And so the process around which collateral was accumulated was called ramp.

Q. All right. And now do you recall a CDO squared called the Class V III?

A. I've heard the name.

Q. And that was a CDO that was structured in your CDO business, is that right?

A. Yes.

Q. And in January '07 you made a request to Mr. Barnes for a temporary exception to the warehouse risk limitations because you were ramping to billion-dollar CDOs, is that right?

A. That's right.

Q. And one of those deals was the Class V III, correct?

A. Yeah. I don't recall for which specific deal it was. We had a number of deals going on at the same time, roughly half a dozen. I don't recall which deal was -- would cause an exception.

Q. All right. And the independent risk management section

granted the exception to the risk limitations at that time, is that correct?

A. I don't recall exactly but --

Q. All right. Can we please show Exhibit 127 to the witness, Mr. Campos. Just the witness, yes.

A. Okay.

Q. Mr. Dominguez, did you have an opportunity to review Exhibit 127?

A. I did.

Q. And did that refresh your recollection as to whether the temporary exception to the risk limitation was granted?

A. It says approved.

Q. All right. Now -- and did that refresh your recollection that it was improved or --

A. No, but I'm happy to assume it was.

Q. All right. Did you have a role in determining the job position for the people who sat on the CDO desk?

A. I did.

Q. And, for example, did you have a role in determining the scope of Mr. Stoker's job on the structuring desk?

A. I did.

Q. What role did Mr. Grant have in determining the scope or role of the people assigned to the structuring desk?

A. Well, he had -- he had significant latitude, but he would check with me first. He would often -- I mean, I really -- I

wasn't that interested in the more junior people. He could shift those around, you know, as to where the resources were best used. But the more midlevel the senior people, we would have a discussion.

Q. All right. And individuals would come to you asking for more responsibility in the CDO business, is that right?

A. From time to time.

Q. In fact, Mr. Stoker asked you to give him more responsibility in the CDO business, is that right?

A. That's right.

Q. Mr. Campos, could you show Exhibit 73 to the witness, please.

Mr. Dominguez, do you recognize Exhibit 73?

A. Yes, I do.

Q. And is that an e-mail that you received while you were working at Citigroup?

A. Yes.

MS. PETERSON: Your Honor, we would offer Exhibit 73 into evidence.

MR. TAYLOR: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 73 received in evidence)

MS. PETERSON: Could you please publish that to the jury, Mr. Campos.

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BY MS. PETERSON:
Q. Now, Mr. Dominguez, this was an e-mail that Mr. Stoker sent to you, is that right?
A. That's correct.
Q. And he was asking to be put in charge of the CDO squared business, correct?
A. Correct.
Q. Now, in November of 2006, when Mr. Stoker sent you this e-mail asking to be in charge of the CDO squared business, Mr. Grant was his supervisor, is that right?
A. That's right.
Q. And the CDO squared business fell under Mr. Grant at the time, is that right?
A. That's right.
Q. Now, thanks. You can take that down.
Mr. Campos, if you would please show Exhibit 74 to the witness.
Mr. Dominguez, do you recognize Exhibit 74?
A. I do.
Q. Is that an e-mail you received while you worked at Citigroup?
A. I do.
MS. PETERSON: And, your Honor, I would offer Exhibit 74 into evidence.
MR. TAYLOR: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 74 received in evidence)

MS. PETERSON: Please publish that to the jury.

BY MS. PETERSON:

Q. And, in fact, shortly after Mr. Stoker sent you the other e-mail we looked at, he asked for you to give him more responsibility so Citigroup could make more money and win the league tables, is that right?

A. That's what the e-mail says.

Q. And he stated at the time that he wanted to be in charge of the high grade CDOs and the CDO squared, right?

A. That's the request.

Q. Now, are you familiar with the term key man risk?

A. Yes.

Q. What does key man risk mean to you?

A. Well, typically it's an individual in a key position, important position, the loss of which would be problematic. It might cost money. It may take -- because it takes time to replace people, etc., etc.

Q. And in February of 2007 you considered Mr. Stoker to be a key man on the structuring desk, is that right?

A. He was one of several, yes.

Q. And now you had a role in setting Mr. Stoker's compensation, is that correct?

A. That's correct.

Q. And compensation was based in part on how well the employee did their job, is that right?
A. That is correct.
Q. And typically compensation was made up of a basic compensation or salary and a bonus, is that right?
A. Discretionary bonus, that's right.
Q. And did you have concerns in early 2007 that other Wall Street firms would lure your employees away with higher compensation?
A. That was an ongoing concern for years.
Q. And did that factor into how compensation was set for the Citigroup employees?
A. Yes, it did.
Q. Now, at some point you learned or heard that Mr. Stoker had been offered a higher compensation somewhere outside Citigroup, is that right?
A. That's correct.
Q. And that offer you learned had come from Merrill Lynch, is that right?
A. That's correct.
Q. And you understood that that offer had been for approximately 2.5 million in compensation, is that right?
A. Vaguely. I don't remember the exact number, but that's the order of magnitude, yes.
Q. All right. And now because of that you supported a

guaranteed compensation for Mr. Stoker, is that right?
A. That's correct.
Q. And you didn't really like guaranteed compensation, did you?
A. I didn't.
Q. And why is that?
A. It just put us in a, you know, very bad situation. And it just made things inflexible, because then at the end of the year, you know, I would have to -- that would be a limiting factor on how everybody else could be compensated. And, jeez, what happened -- what happens if you compensate someone -- if you guarantee someone and they don't have a good year? You're still stuck with the guarantee.

So, I just -- the only time we did that was either when we were -- like this situation, when we were trying to prevent a competitor from poaching someone, or we ourselves were trying to poach someone from a competitor. Those are really the only two circumstances.
Q. All right. And you supported one for Mr. Stoker in this instance, is that right?
A. That's correct.
Q. And you supported it because you couldn't afford to lose a key person on the structuring desk, is that right?
A. Yes. We'd already lost two people in previous months, and we were -- we couldn't lose another midlevel to senior guy on

the desk.
Q. And if Mr. Stoker's job performance in the CDO business prior to this point had been below Citigroup's standards, would you have agreed to a guarantee?
A. No.
Q. Now, if you had known at the time that Mr. Stoker lied about the Merrill offer to get more money from Citigroup, would you have agreed to the guarantee?
A. If I knew he lied, no, I wouldn't have agreed to the guarantee.
MS. PETERSON: All right. Thank you. I have no further questions, your Honor.
THE COURT: Cross-examination?
MR. TAYLOR: Thank you, your Honor.
Could our paralegal approach with the binder for the Court, please, and for the witness.
THE COURT: Yes.
CROSS EXAMINATION
BY MR. TAYLOR:
Q. Good afternoon, Mr. Dominguez.
A. Good afternoon.
Q. I'm Steve Taylor. I represent Mr. Stoker.
I want to follow up on a couple questions that were asked to you by counsel for the SEC. First question, do you have any degrees?

A. I have a PhD in economics and a master's in economics, Master of Science in economics and a college degree in economics.
Q. And do you have any professional licenses?
A. They've lapsed. I have one from the CFTC. I don't recall the number. I just recently took the exam.
Q. Back in 2006/2007 did you have any professional licenses?
A. I did. You know, the usual Series 63, Series 7, and then the principal's license, I believe it's called the 24.
Q. When you were talking about the various structures in this CDO group, I don't believe you mentioned who your superior was at that time in 2006 and early 2007. Who was that?
A. My superior was Michael Raynes.
Q. What was Mr. Raynes' position?
A. He ran what was called global structured credit products, which included the CDO business. But what's -- was much broader, other structured product businesses.
Q. Was he your direct supervisor?
A. Yes.
Q. And you knew who he reported to?
A. He reported to the coheads of credit, global credit, Chad Leat and Mark Watson.
Q. And the global heads of credit, do you know who they reported to?
A. I do. Mark Watson and Chad Leat reported to the global

heads of fixed income. That's Randy Barker and Jeff Coley.
Q. Were there levels at Citigroup group above that?
A. Several.
Q. What are those?
A. There was Tom Harris, who ran the global investment bank. And then of course Chuck Prince, who ran all of Citigroup. Above him.
Q. Focusing on your group, the global CDO group, was that all your group or did you have a cohead?
A. I was cohead with Janice Warren.
Q. And how did you divide responsibilities between the two.
A. We -- I was more the markets guy and Janice was more the internal operations chief financial officer, more internal issues. And I was more external issues.
Q. You were asked some questions about the responsibilities and duties of the various desks in your group. Do you remember those questions?
A. Yes.
Q. And when you responded regarding the duties of the structuring desk, you were asked specifically about feasibility analyses and models. Do you remember that?
A. That's right.
Q. Were there other responsibilities that the structuring desk had, other than feasibility analyses and models?
A. Well, there was the document production, obtaining the

ratings from the rating agencies, managing that process. Also to assist the sales people and the syndicate desk in marketing a transaction. In certain instances where we -- we were obtaining a surety contract from one of the bond insurers, they negotiated -- they were very heavily involved in negotiating those terms. That was it.

Q. Was structuring responsibility for marketing products, were they primarily responsible for marketing products?

A. No. The primary marketer was really the sales person.

Q. Was there any other desk involved in marketing as well?

A. Well, the primary syndication desk was very focused on marketing and -- but the account manager and the responsible party was really the sales person. But, you know, with a lot of large institutions, they have relationships throughout the firm and they like talk directly to either the syndication person or the structuring person away from the sales person.

Q. So then what was structuring's role in the marketing process?

A. Really to respond to investor questions, and those questions might be scenario analyses we would get from institutions. We would get, well how does this deal look under these economic conditions? Can you run the cash flows and calculate an internal rate of return? Further details or stratifications of a collateral pool. And, you know, any question really they wanted to ask.

Q. Let's talk about the syndicate desk now for a second. You testified about the syndicate test being involved in gauging investor interest regarding deals. Were there other responsibilities of the syndicate desk?

A. Well, the syndicate desk was a combination marketing and risk taking desk in the sense that they had to make a decision on when the appropriate time would be to underwrite the transaction. And by that I mean not every -- not every tranche -- the deals generally speaking were not 100 percent sold at pricing. And so judging when there was enough investor interest to price a transaction, knowing you were going to end up with unsold inventory, was -- was the risk-taking function of the syndicate desk. And that was a judgment call, based on who were the investors looking at the deal, what stage of the analysis were they at, what would market conditions and factors like that.

Q. So was syndicate then responsible for that unsold inventory at the time of pricing a deal?

A. Yes.

Q. And prior to a deal closing, I believe you testified to the process of obtaining your sourcing collateral. Is that called a warehouse?

A. Warehousing, yes.

Q. When you're warehousing collateral, is the syndicate responsible for the risk that something might happen and you

wouldn't be able to close the deal?
A. That's right.
Q. So if a deal doesn't close, the risk to Citigroup is what?
A. Well, we have -- we have all this collateral that's ramped and no deal.
Q. And what is the effect of that on Citigroup?
A. Well, that -- it could be that markets have moved against us during the intervening period. And that's really a big risk.
Q. Is that risk the same for synthetic deals or cash deals?
A. It's -- it's slightly different in the sense that if we're the swap counterparty on a synthetic deal, then there's really no net -- no net exposure at the firm. We have one desk that's short and one desk that's long. It nets the zero. So if the deal doesn't happen, it just rip -- you know, you would just rip up the pieces of paper documenting the transaction. In the case of cash, you actually have to go out and sell the bond. So they are slightly different.
Q. So then in your synthetic example, where you said you were both buying protection and selling protection, which parts of Citigroup were the parties in that example?
A. Well, in the case of when we're doing an asset backed deal, the counterparty was the asset backed desk and was the asset backed desk facing the warehouse in the CDO desk. In the case of a CDO squared, it was the secondary desk versus -- facing

the warehouse. So it was all within the same business unit.

(Continued on next page)

Q. And why is it that then if the deal doesn't close, that you could just rip up the contracts?
A. I'm sorry, can you repeat that? Can you rephrase that?
Q. Sure.
In the example you gave, where you had the warehouse and the trading desk in the CDO deal, if the deal didn't close, I believe you said you could just rip up the contracts; is that right?
A. That's right.
Q. And why could you just do that?
A. Well, it's the same business; it's just -- it's two accounts in the same businesses. It's just internal.
Q. So in that example, during a synthetic deal, if the deal doesn't close and the syndicate desk -- I mean the warehouse and the trading desk simply rip up the contracts, there's no net loss to Citi then; is that correct?
A. That's right.
Q. But if there had been, say, contracts with other parties, there would be loss to Citi; correct?
A. That's right.
Q. So in that example, a more conservative strategy for Citi to hold the risk just within itself, would you agree?
A. Along that dimension, yes.
Q. Was that common at Citigroup for Citi to provide assets, synthetic assets, to warehouse themselves by buying protection?

A. For CDS squared?
Q. For CDS squared, yes.
A. Well, for CDS squared, since it was the secondary desk versus the primary desk, I mean that was common. You always sourced assets from the desk that traded the underlying. So if we were to do a loan transaction, just to use a slight different example, we would be sourcing from the loan desk. And if we're doing CDO squared, we're sourcing from the secondary desk, which happens to be within our business stream.
Q. So it's common in CDO squared, synthetic CDO squared, for the trading desk to be sourcing assets for the deal?
A. That's right, yes.
Q. And is sourcing assets different than selecting assets?
A. Yes, it is.
Q. What's the difference?
A. Selecting assets is the function of the collateral manager, which is the third-party agent that has agreed to select and manage the transaction for the benefit of the debt and equity.
Q. In your experience at Citigroup, did Citigroup require asset managers to select particular assets?
A. No.
Q. At Citigroup, did Citi -- in your experience at Citigroup, did Citigroup require asset managers to buy particular assets?
A. No.
Q. Did they ever, in your experience at Citigroup, require

asset managers to take only Citi bonds?
A. No.
Q. If a trading desk is sourcing an asset, does that mean that they select the asset?
A. No.
Q. I had a few questions about the offering memorandum.
THE COURT: I'm sorry, I'm not sure we ever got an answer to the question.
What is the difference between selecting assets and sourcing assets? That was the question you forgot.
A. Do you want me to deal with that now?
Q. I think you should always answer --
THE COURT: Why don't you give the other half.
A. Sourcing assets would be to -- is the process of going out in the market and finding assets that have been selected by the manager.
So you go out; manager says, I like this bond. Well, you have to go out and find that bond, right. And there may be specific criteria; that bond needs to be a single A, that bond needs to be most senior piece. There are a number of criteria that are listed in the -- what are called the percentage limitations in the deal description. And somebody has got to go out and find it. And typically, that was the arranger's job.
Now, often the manager would find it at Merrill Lynch,

at Goldman Sachs, at one of our competitors; and they would put it in the warehouse; so they bought it from someone else.

Q. Thank you.

I want to move, if we could, to the offering memorandum you had a few questions from counsel about.

And I believe you had some requests there about the structuring's role in the offering memorandum.

Do you remember those requests?

A. Yes.

Q. Who's responsible for the offering memorandum?

A. Well, there were a lot of people involved. There were internal counsel, external deal counsel, collateral managers counsel, trustees counsel, our structuring desk, the rating agencies. So there was -- you know, there was a lot of people involved in different parts of the offering circular.

Q. What part of the offering circular was structuring involved in?

A. Well, that was really the economics, is description of the deal, the waterfall, description of the waterfall, the size of the tranches, the economic components of the deal.

Q. What about the manager in a managed deal, did they have any responsibility in the offering circular?

A. Well, typically, there's a section in the offering circular that's a description of the manager. And they would provide that, typically, to external counsel who would incorporate it

into the document.
Q. I believe you testified that structuring was responsible for producing the document, getting the document together; is that right?
A. Yes.
Q. And that process, would you expect structuring to consult with the trading desk with what their positions would be with respect to any particular deal?
A. No.
Q. Would you expect the structuring desk to ask what was in the trading desk book?
A. No.
Q. Or what position they held in the various assets that might be in the deal?
A. No.
Q. Is that part of structuring's job description?
A. No.
Q. I'd like to focus you a little bit on 2006 and 2007.
At that time, did you, as head of the global CDO desk, have a view as to where the market was going?
A. Guessing the direction of the market is generally a losing proposition. The market seemed to be pretty strong in 2006. Got soft again in the first quarter, got strong again, and then there was a fairly substantial collapse in the second half of the year, 2007.

Q. And can you put any more specifics on when the collapse happened after it got strong again in 2007?
A. Mid summer.
Q. And prior to that time, mid summer of 2007, did you have any view that this major collapse was coming?
A. No.
Q. Were you at Citigroup structuring products to take advantage of any major collapse?
A. That's hard to do with CDOs, to structure, to take advantage of major collapses. That's hard to do with an illiquid complex product like CDOs.
Q. Why is that?
A. The lead time is just too long. You have to ramp a transaction, and there's document production, and there's rating agencies involved. And lead time is approximately six months. So that requires really knowing where you're going to be six months from now.
We did, from time to time, accelerate or decelerate the rate of ramp on existing deals to capture a little bit more of the market, either the market -- of the market downturn. I remember us doing that in the first quarter on the deal we had for Trust Company of the West. We accelerated the ramp because the market had traded off. But that was really the extent of it.
Q. Decelerating the Trust Company of the West was the extent

of it; is that what your testimony was?
A. Accelerated.
Q. You're accelerating, I'm sorry, Trust Company of the West.
In early 2007, did Citigroup have what are known as super senior tranches and CDOs?
A. Yes.
Q. And without going into a whole history of CDOs that we may get into, can you explain generally what the super senior tranche CDO is?
A. The super senior tranche was the most senior tranche in the hierarchy of tranches. And below the most senior tranche was a tranche of roughly at least two percent, also rated AAA. And so it was senior to a layer that was also rated AAA. And so the probability of default of a AAA was viewed to be so small; but this was, in fact, senior to it, it was called super senior.
Q. And would you consider that by holding the super senior tranche in CDOs, that Citigroup was aligning itself with the long performance of the CDO?
A. Yes.
Q. So if there was -- the CDO performed well, Citigroup would benefit; correct?
A. Yes.
Q. And if the CDO defaulted, Citigroup -- that risk would be on Citigroup, and they would experience the losses, right?

A. Yes.

I mean it had to be a pretty cataclysmic event to eat all the way through the subordinate tranches into the super senior. And that was the theory.

Q. Did it eventually, with that theory, Citigroup experience some pretty cataclysmic losses, as you say?

A. We did.

Q. As a result of these super senior positions?

A. We did.

Q. By mid 2007, do you know how much exposure Citigroup had on the long side of CDO deals?

A. Are you talking about super senior or primary or secondary?

Q. Well, let's start this way: How many different varieties of exposure to the long side did Citi have in mid 2007?

A. Well, we had loan positions in the primary book, unsold, so these are unsold positions. We had the super senior book. And then we had positions on the secondary book. And I don't recall -- on the secondary book, since that business could be long and short. I don't recall whether we were net long or net short.

Q. Is there any other form of long exposure that Citi had around that time of CDOs?

A. Well, there were warehouses. There were warehouses in process of ramping for other deals.

Q. And so those warehouses, those are collateral ramp deals

that had not yet closed, but where Citi is holding the long position because they had sourced that out; is that right?
A. That's right.

MR. TAYLOR: I'd like to show the witness Exhibit 1126.

THE COURT: Before you do that, we're going to give the jury their mid-afternoon break.

Ladies and gentlemen, we'll take a 15-minute break at this time, and then we'll resume at 3:30.

(Jury excused)

THE COURT: The witness may step down.

We'll see you in 15 minutes.

(Witness excused)

THE COURT: Please be seated.

Now I recognize that as an accommodation to this witness's counsel, this witness, who was supposed to be the second witness, was taken first. But that still is no excuse for what I have just seen over the last hour and-a-quarter, which is counsel for both sides putting questions to the witness in language the jury does not understand, accepting answers in language the jury does not understand, and then going on to put an even more un-understandable question to the witness.

I defy either counsel to go through the transcript of the last hour and-a-quarter and find more than one percent of

the questions and answers that were in simple English.

You folks are so into the terminology, that you forget that this is not everyday language. So we have terms like "waterfall," we have terms like "warehousing," we have terms like "Series 7," we have terms like "AAA." We have one term after another being foisted upon this jury without any attempt to explain it.

It's not the witness's fault. He speaks this language every day. He is under the illusion that this is how human beings speak.

But you folks, armed with permission of this Court to ask leading questions so that you could easily say, by this do you mean such and such, by that do you mean such and such, you wouldn't even need him to put it in simple language, you could do it, have colossally failed on both sides. And I will not allow this jury to continue to be confused in this way.

If I hear another term that is not defined in simple language, we will end for the day and maybe pick up two months from now.

See you in a few minutes.

(Recess)

THE COURT: Please be seated.

Let's get the witness back on the stand.

THE DEPUTY CLERK: May I bring in the jury?

THE COURT: Yes.

MS. KEKER: Your Honor, after this witness, may we approach to talk --

THE COURT: Yes, I haven't forgotten.

(Jury present)

THE COURT: Counsel.

MR. TAYLOR: Thank you, your Honor.

BY MR. TAYLOR:

Q. Good afternoon, Mr. Dominguez.

Could you provide us a description of who investors are in CDOs that your CDO group put together?

A. Broadly speaking, in the gamut of global insurance companies, global banks, there were, from time to time, private individuals, there were some specialized investment pools that were set up to invest in CDOs. And each investor class tended to focus on different tranches of the deal.

Q. How about CDO managers, other managers of deals, did they invest in some of your deals?

A. From -- yes. So typically or often an asset-backed CDO would have a bucket for other CDOs which would range in size. And then, of course, the CDO squared was 100 percent other CDOs.

Q. So some of these other CDO managers, their business is to manage CDOs themselves, right?

A. That's right.

Q. And they're taking part of your product, your CDOs, and

putting them into their own deals; is that right?
A. That's right.
Q. And in your experience, were these investors sophisticated?
A. I would say -- well, they were all large -- very large institutions, global institutions. And the thing -- the thing about CDO product, it's very specialized and very technical. So you tend to find specialists at the institutions, so I would say yes.
Q. And in your experience, they know a lot about CDOs?
A. Yes, especially the ones who had, as a business, matured. And there were more CDOs. Over the years, as the CDO business matured, these institutions, whether it's insurance company or bank, developed departments and pools of CDOs; and so they actually got to be pretty good, because they saw many, many transactions over the years.
Q. And regarding those CDO managers, did Citigroup have relationships with many of those CDO managers?
A. We did. As a large fixed income operation, we had relationships with the great majority of large fixed income managers who, of course, were the funds managing CDOs.
Q. And the large fixed income managers, you're saying those included CDO managers investing in some of your deals?
A. That's right.
Q. And you thought they knew a lot about the CDOs they were buying?

A. Yes.

MR. TAYLOR: I don't have any further questions.

Thank you.

THE COURT: All right. Redirect.

MS. PETERSON: Very briefly, your Honor.

REDIRECT EXAMINATION

BY MS. PETERSON:

Q. Mr. Dominguez, Mr. Taylor asked you a series of questions about your supervisor and on up the chain in Citigroup. Do you remember that?

A. Yes.

Q. If the CDO group wanted to structure a CDO, were you required to seek permission above your position?

A. No.

MS. PETERSON: Thank you.

No further questions.

THE COURT: All right.

Anything else?

MR. TAYLOR: No, your Honor.

THE COURT: Thank you very much.

You may step down.

(Witness excused)

THE COURT: Please call your next witness.

And while the witness is coming in, counsel, please approach the sidebar.

(At the side bar)

THE COURT: Mr. Keker, there was some exhibit you wanted to make --

MS. PETERSON: These are our demonstratives for Dr. Jaffee. And they object to the first seven.

THE COURT: I'm sorry, I can't hear you.

MS. PETERSON: The first seven, we walked through mortgages, to mortgage-backed securities, to CDOs, to CDO squared, and they are objecting claiming --

MS. KEKER: How about if I object? Can I make the objection?

Your Honor, he said he could testify to the basics of CDOs and CDOs squared. You said it a couple times. And the first seven slides don't have to do with the basics; they have to do with the precursors, the history that you said you weren't going to let. That's my first objection.

The second objection is No. 17, you can show the judge that. No. 17 is the unusual risk sensitivity of synthetic CDOs. It's not relevant to anything in this case. This ten percent and eight percent numbers are without proper foundation. You said that you didn't see any basis for it.

But the point is this is not a trial about whether or not these synthetic CDO squares were a good idea or whether or not they are unreasonable risks meant that the SEC should have done something about it ten years ago. It's about whether or

not the structurer working in this business acted unreasonably in 2007. This slide shouldn't be shown and he shouldn't be able to talk about unreasonable risk sensitivities.

MS. PETERSON: May I respond?

The first seven slides we have that they are claiming is the history that you disallowed isn't -- it's the basic building blocks to get to a CDO. Today if you create a --

THE COURT: Yes, okay. So I agree that's the distinction. And as we go through, we'll take it one at a time. And if it's just the basic building blocks, it will be allowed; if it's the history, it may not be allowed.

Given what happened with the previous witness, who I now very much regret having allowed to testify out of turn, I think the jury very much needs a basic grounding in the basics of these instruments.

Now, what about Exhibit 17?

MS. PETERSON: We believe that Professor Jaffee does have a foundation and a basis for the information that's on here, including the eight percent and the unusual risk sensitivity. His opinion about the eight percent is based on a published, well-regarded, well-reputed study out of the Philadelphia federal research where they have studied data.

THE COURT: Approximately how long into his testimony do you expect to get today?

MS. PETERSON: This is the very last slide.

THE COURT: And how long do you think his testimony will be altogether?

MS. PETERSON: We tried to get it to an hour, like you said.

MR. INFELISE: You said an hour.

THE COURT: Yes.

MS. KEKER: You said an hour.

MS. PETERSON: If we have to define a few more terms, it might take a little bit longer, but I tried very hard to get it to an hour.

THE COURT: It's now quarter of four. So when we get down to this exhibit, maybe we will excuse the jury and I'll question the witness out of the presence of the jury to see if it's admissible or not.

MS. PETERSON: Okay.

(Continued on next page)

(In open court)

DWIGHT JAFFEE,

called as a witness by the Plaintiff,

having been duly sworn, testified as follows:

THE DEPUTY CLERK: Please state your name and then spell it slowly for the record.

THE WITNESS: Dwight Jaffee. First name is D-W-I-G-H-T; last name is Jaffee, J-A-F-F-E-E.

THE COURT: Counsel.

MS. PETERSON: Thank you, your Honor.

DIRECT EXAMINATION

BY MS. PETERSON:

Q. Good afternoon, Professor Jaffee.

MS. PETERSON: Mr. Campos, can you please show Professor Jaffee Plaintiff's Exhibit 419.

Q. Professor Jaffee, do you see Plaintiff Exhibit 419?

A. I can. It's my curriculum vitae.

Q. Can you tell us what a curriculum vitae is?

A. It's a listing of all my academic achievements, all of my publications sort of from the get-go till today.

Q. All right.

I'd like for you to please explain for us your educational background.

A. So I have a bachelors degree in economics from Northwestern University in Chicago, and a Ph.D. in economics from the

Massachusetts Institute of Technology, M.I.T., up in Cambridge, Mass.

Q. And after obtaining your Ph.D. in economics, what has your work experience been?

A. So I've had basically two teaching positions my entire career. I taught for over 20 years in the economics department at Princeton University, and then I moved west and I have been teaching in the Haas School of Business at the University of California-Berkeley for another more than 20 years.

Q. And what department are you in at Berkeley?

A. So in the business school there, I am joint between the finance group and the real estate group.

Q. And what types of courses have you taught there?

A. So I have taught courses in banking, in finance, in mortgage markets. And then most recently, over the last ten years, I have focused on a major course on asset-backed securitization, which is a form of mortgage market activity.

Q. All right.

And when you say asset-backed securitization, what does that mean?

A. It's going to describe a process in which mortgages -- it's really mortgage-backed securitization in which mortgages have been consolidated into a pool and made into a security that individual investors can purchase.

Q. All right.

And have you heard the term "structured finance" before?

A. Yes.

Q. What does "structured finance" mean?

A. Well, structured finance is a particular format of securitization in which the securities that are created are going to be -- have different risk characteristics; and that structure allows the sales of these securities to be done more easily and maybe more efficiently.

Q. And the courses that you have taught, have they included segments on mortgage-backed securities?

A. Yes. I would say that's been a major focus of those courses.

Q. And have they included topics related to collateralized debt obligations?

A. Absolutely.

Q. Now, over the course of your career, have you published any written materials?

A. Yes. I think -- as the curriculum vitae would show, I think my total publications of books and papers is probably just short of 150 items today.

Q. Is that published books?

A. Mm-hmm.

Q. And articles?

And have any of those published works dealt with

mortgage-backed securities?
A. Yes, any large number of them have.
Q. And did your publications, have they dealt with collateralized debt obligations?
A. Absolutely.
Q. And now, have you done any testimony or consulting?
A. So in recent years, I've both given testimony and consulted with a number of government agencies.
I recently testified in front of the Senate Banking Committee of the U.S. Congress; I testified in front of the Financial Crisis Inquiry Commission, which was a commission created by the U.S. Congress; I've given presentations and talks recently at the U.S. Treasury, at the Housing and Urban Development Agency, at the Federal Reserve, and so on, frankly.
Q. All right.
Now, Professor Jaffee, we're going to have you walk through and explain some mortgage-backed securitization and things.
Have you prepared some demonstrative exhibits to assist in explaining your testimony?
A. I have.
Q. All right.
MS. PETERSON: Roy, would you please bring up the slides.
Q. Now, Professor Jaffee, what were the basic building blocks

for securities like mortgage-backed securities and CDOs?
A. So absolutely the first step is a standard home mortgage. That is the atom of the whole process. You start with a home mortgage.
Q. All right.
MS. PETERSON: Let's bring up the next slide please.
Q. Now, can you please explain very briefly the concept of a mortgage?
A. Yes.
So a home mortgage is created when a family has decided that they have an opportunity to buy a house. And they go to the bank and they want to take out a loan. And that loan is going to be called a mortgage. And the bank provides them with the funding, in addition to their down payment, to buy the house.
And in the graphic, that's what the gray loan is; that's the loan money being provided by the bank to the borrower.
And then in exchange for that, of course, the borrowing family has to make payments back to the bank. And that's what's written here as the principal and interest; that the loan payments that the borrowers make are going to consist of interest payments on the loan, and then the repayment of the loan balance, that's called the principal. And those payments will be made monthly over the whole length of the loan.

So that's just one mortgage.

But, of course, the banks that are making these mortgages are going to be making many of them. And so what's shown in the graphic here by the little houses is simply the accumulation of many individual mortgages that are being held in the portfolio of this one bank.

And then, of course, there's many banks doing the process, as well. But that's the basic of mortgage origination, and that's the starting point for securitization.

Q. All right.

And why don't you just slow down a little bit in your explanation so that we can all understand what you're saying.

Now, you indicated earlier that mortgages were the basic building block for a security like a mortgage-backed security.

Can you explain to us what a mortgage-backed security is?

A. Yes.

And I think if we could go to the next graphic, it might help me here. Great.

So what you can see on the far left here is that same bank that we were using in the first example, with all these mortgages that it's made. And what banks have faced is an issue that the amount of mortgages that they can continue to make depends on the amount of deposits they have.

And so it was not infrequent and it is not infrequent that banks get filled up in the sense they've used all of their available deposits to make mortgages. And you have to have more customers at the door who are creditworthy. And they would like to make them loans.

And so the banks came up with an instrument, a device, that would allow them to sell their mortgages to other investors. And those investors in this graphic are shown at the far right. And these could be typically kind of mutual funds, pension funds, or any kind of large investor who might be willing to buy some of these mortgages from the bank.

And the benefit to the bank is shown at the very bottom of the graphic, that when these investors buy the mortgages from the bank, they, of course, pay for them, and that money gets recycled into the bank, which then allows the bank to make more mortgages and fulfills that function.

So mortgage-backed securitization has been very important in providing a continuing volume of mortgage lending to the borrowers, because the banks were limited in the amount of their proceeds.

So that's the basic idea.

But there's, of course, plumbing here, if you'd like me to go on.

Q. Let me just ask you a few questions.

In the middle of your slide it states mortgages are

transferred to SPV.

A. Right.

Q. What is an SPV?

A. So this is the part of the plumbing of creating a mortgage-backed security.

And so the way technically it occurs is that the bank first takes this group of mortgages that it's made, which we would now called a mortgage pool, simply meaning it's a bunch, maybe 1,000, individual mortgages, and they are going to treat them as a whole. You can think of them as packaging them.

And then they are going to move them into an entity that's called a special purpose vehicle. This is just a conceptual, it's a legal entity; technically, it's actually a trust. But just think of it as an entity that the bank creates to hold the mortgages.

And now what happens is this SPV becomes a standalone entity; it has a trustee who's the titular head of it, it may have -- it will have a few staff people that run it. And it sells these participations to the investors so the investors are really buying a share of the SPV. And what that entitles them to, the key feature here, is that all of the payments that are being made by the mortgage borrowers, these monthly payments, now get mailed not to the bank, because the bank has sold the mortgage, the payments get mailed to the SPV; the SPV collects all of these, and then pays them out to the investors.

And that's sort of the plumbing transmission of a mortgage-backed security. It's called a pass-through security, because all of the payments made by the borrowers at the far left are simply being passed through the SPV and they end up in the hands of the investors. So this SPV in the middle is just an intermediary; it's just a channel or a conduit, as it's sometimes called, to let the monies flow in an efficient way.

Q. All right.

And now at the very top of your slide it states single class mortgage pass-through security.

What does "single class" refer to?

A. Single class refers to the investors at the far side that although there may be any number, even a large number, of investors who are buying a participation in this particular mortgage-backed security, they are all equal.

If there's two separate investors, they each have the same priority, and they just each get their proportionate share of all the payments that are being passed through.

So there's no attempt to distinguish one investor from another; they are all treated equally, and that's called a single class MBS.

Q. Is there another type of mortgage-backed security?

A. Yes, there is a second form, which is called a multi-class mortgage-backed security.

MS. PETERSON: All right. Can you bring up the next

slide? There you have it.
Q. And can you please explain to us the structural features of a multi-class mortgage-backed security.
A. And this slide sort of follows on directly from the first in the sense that at the far left you have the same bank, just another example, but think of it as the same bank that made those same mortgages. And you can even think of it as we have the same SPV, the same special purpose vehicle that's holding those same mortgages.
So the only distinguishing feature of the multi-class MBS is on the far right side in which you see listed tranches, Tranche AAA, BBB, CCC, and equity tranche. And this is a technical term in this business. "Tranche" I think is actually a French term that means "slice."
And what they've literally done, instead of having a single class, where everybody shared equally, they slice the payments that go into the investors into different seniorities or different priorities. And the priorities are based on how high up you are in the stack.
The AAA is called the most senior tranche; and they have first priority on any money that's paid by the mortgage borrowers. Any principal payments by the mortgage borrowers goes first to the AAA tranche, until they get fully paid off. And once they've been satisfied, then the money starts to flow to the BBB, and so on down the process.

This is sometimes called a waterfall process. And you can see what happened there is the money, the green, if you like, actually starts at the top and then gradually falls all the way down to the bottom.

So when a mortgage-backed security is working well, that's all there is to the story. The AAA tranche gets paid off first, and they go home; and then the next one in order gets paid, and so on down the pecking order, in effect.

These tranches have names in the sense that they are actually in the technical transaction are going to be labeled A, B, C, and so on. But they'll also get credit ratings, that's where the AAA or the BBB referred to how highly-rated are the securities.

The AAA tranche will effectively be risk-free. The rating agency that has rated it will have said there's almost no chance that an investor is going to lose their money on the AAA tranche.

As you work your way down, the amount of possible risk rises. And if you get to the very bottom at the equity tranche, that is sort of the last in line, and so they, of course, run the greatest risk. If there were any defaults at all, it's likely to come out of their pocket in terms of not getting paid what they expected.

Between those two, there's two other tranche names that are sometimes used and you may hear.

There's something called a mezzanine tranche. And the name "mezzanine" simply refers to any tranche that's just above the equity tranche. So in this example, maybe the CCC might be thought of as the equity tranche.

And there's also something called an investment grade tranche, which is something less than the AAA, but it's still really pretty good quality, and this example might be the BBB.

So there's various terms, but they all have the feature we're talking about, how sure the investor is to get back their money, and that's the purpose of the multi-class securitization.

Q. All right.

So which of these four tranches that are depicted on your slide is the riskiest?

A. Definitely would be the equity tranche.

Q. And which is the so-called safest?

A. AAA.

Q. All right.

And, again, how do the investors make money on an investment like this?

A. Well, all of these investors are going to basically be receiving interest payments. And that's what induces them to want to take the investment. But, of course, in all finance markets there's going to be a trade-off between the higher the return, you have to take a greater risk. And that shows up

very clearly here.

The AAA tranche, while it's the least risky, it's the safest one, is also going to get the lowest rate of return, whereas as you go down the order, and you're willing to take on more risk, you will be promised a higher return, but, of course, you're taking on a greater risk. So there's a trade-off.

Q. You've explained to us how the payments are made from the AAA tranche down to the equity tranche.

What happens if the security suffers losses or declines in value?

A. So -- and that's going to occur if some of these borrowers on the very far left start to fail to make their mortgage payments. And that means the SPV, the trustee, or the servicer that's running the SPV isn't going to have the money expected. And that means that some of the money is not going to end up in the hands of the investors.

And you can see here in the graphic we've added that, we sometimes call this an act of default, but it simply means the borrowers are not making their proper payments. And eventually this has to have an effect on the investors on the far right. And you can sort of see here, filling up. And the idea of the graphic is that this is sometimes called a sinking ship in the sense that as there's more and more losses, it starts at the various lowest level, the equity tranche suffers

the losses first, but if there's still more, it might reach this CCC tranche and gradually it could work up. And in a very extreme case, even the AAA tranche might fail to get the payments that were promised it.

Q. And I apologize for doing this, but you used the term "waterfall" earlier.

Can you tell us what "waterfall" means with respect to a multi-class mortgage-backed security?

A. Yes.

So both the term "waterfall" and the "sinking ship" are sort of two sides of the coin.

The waterfall refers to the fact that when things are going well, and the money is properly coming through this channel, it starts at the top and then filters its way down from the top tranche all the way to the bottom. And "waterfall" is a pretty nice description of that.

The sinking ship is just the opposite. It's the idea when things are going badly and the money isn't coming through, the losses start at the bottom, and then they work their way up the priority.

Q. All right.

Now, we've been discussing mortgages and these mortgage-backed securities. Are there different classes of mortgages?

A. Yes, there are.

There are going to be prime and subprime mortgages are probably the two primary differential types of mortgages.

Q. All right.

And can you tell us what a subprime mortgage is?

A. Yes.

Well, so let me start even with a prime mortgage is your standard mortgage. And it's going to be called "prime" based on the fact that it meets the standards that the banker or lender has imposed. And these will be things like you must have a certain level of creditworthiness in terms of your credit rating, you must have steady employment, you have to have various features that the bank deems to be prime, and then you become a standard mortgage. And that goes into one category.

But the markets have evolved, and banks have been making or did make large numbers of subprime mortgages. And what that meant is that the borrower failed to qualify on one or more of these criteria. They didn't have a prime credit rating, or they didn't have a steady or dependable job, or there was something in their credit history that was a little bit questionable, so they didn't meet the standards for being a prime borrower, but they still were sufficient that the bank was willing to make them a mortgage, but this would be called a subprime mortgage based on the fact that they were less than prime. And these two categories simply existed in the market

side by side.

Q. And, Professor Jaffee, do you have a slide that lays out some of these subprime mortgage issues?

A. Yes, and gives some facts about them.

So as you can see here, the first bullet is just to say what I just noted, that a subprime mortgage differs from a prime mortgage in the feature that it doesn't have the full creditworthiness of a prime mortgage.

Both prime mortgages and subprime mortgages are readily securitized; so everything that I just described about mortgage-backed securitization could be done -- was always done with prime mortgages, but equally well was done with subprime mortgages.

In fact, most of the subprime mortgages that were made in the last ten years were securitized. They went through exactly the process of mortgage-backed securitization that I just described.

Subprime mortgage lending became a very big part of the mortgage market as a result of the big housing boom that we had in the United States in 2005 and 2006 and going into the very beginning of 2007. As much as $600 billion of subprime mortgages were made in 2005 and 2006. And this represented approximately 20 percent of the total mortgage market activity in those particular years.

(Continued on next page)

BY MS. PETERSON:

Q. Now, I'm sorry. I didn't mean to interrupt, but before you go to your last point, when you used the term securitized, is that simply the process of turning mortgages into a mortgage backed security?

A. Exactly.

Q. All right. Thank you. And now your last bullet here makes a reference to collateralized debt obligations. How did that relate to the subprime mortgage issue?

A. So as I've just indicated, many of these subprime mortgages -- in fact, virtually all of the subprime mortgages were transformed into mortgage backed securities. But for many of them that was not the end of the story. Many of these mortgage backed securities went through a further process of securitization. They were securitized a second time, and the instrument that is -- that was used to create this second round of securitization was called a collateralized debt obligation or CDO.

Q. All right. Now, Professor Jaffee, I'd like to have you explain to us how a collateralized debt obligation is created. And do you have a slide which will help explain that?

A. I do.

Q. If you could bring up the next slide, please.

A. So the starting point for a CDO is that you need to have some underlying assets. And remember, we just talked about a

mortgage backed security where the underlying assets were individual mortgages. In a CDO, the underlying assets are tranches from a mortgage backed security. So you've got to think of the case -- we started with mortgages. We made some mortgage backed securities, and we're now going to acquire -- and in this example we're going to focus on the triple B tranche, from say 15, but it could even be 50 different mortgage backed securities. And we're going to take these tranches, which are securities themselves, and they're going to become the building block for a second round of securitization.

And so that's the key concept of how the subprime mortgages and subprime mortgage backed securities are linked to CDOs, that the mortgages became mortgage backed securities and then parts of these mortgage backed securities are going to become the building blocks of a CDO.

Q. All right. If you could take this to the next slide.

A. Yeah. And then we go on with the process. And so this graphic is an attempt to show you more fully how this all happened. So we're starting here with these mortgages on the far left side. And they're now going to be securitized into these tranches, into these 15 mortgage backed security tranches, and then we're going to go on to a third stage, which may be on the next graph -- no, it's here. Good. Which shows you the tranche -- the investors, what the investors are buying in a CDO. And these investors are going to be buying

securities that in some sense by name look very much like the securities we already talked about in the mortgage backed security. They're going to be tranches -- we can use that term again -- and they're going to be rated triple A, double A and so on all the way down to an equity tranche.

But the key thing here is that what they're going to be paved by is not the original mortgage borrower per se but by the triple B tranches that were created out of those original mortgages. And perhaps the most interesting economic feature of this transaction is that you've been able to create a triple A CDO tranche at the very top here, even though the underlying assets, the things that are building into it are all triple B securities.

So there is a very interesting financial engineering economic benefit of this process which comes out of diversification, which is you can take these triple B tranches, resecuritize them into a CDO and end up with some more, some new triple A tranche in the CDO structure.

Q. So just to make sure we have this, we start with a mortgage. It's securitized into a mortgage backed security, and then you take a pool of mortgage backed securities and securitize them into a CDO. Is that --

A. Right. A portfolio of tranches, of specific tranches. And then you securitize them again, same process applied a second time to create the final structure you see on the right.

Q. All right. And now the CDO that you have just explained, does that have a name?

A. So this specific CDO that we're illustrating here would be called a cash CDO. And the reason that it's called a cash CDO is that it's based on these triple B MBS tranches. And the way the investors in this cash CDO are getting paid is that the money is actually coming out of -- is coming originally from the mortgage borrowers, but it gets paid into the triple B tranches at the MBS level. And then that money, that real cash, is transferred on to the CDO investors. And so it's called a cash CDO because they are getting paid cash from the original triple B tranches directly. So it makes sense, and it's -- the obvious form is a cash CDO.

Q. And now is there another kind of CDO?

A. But there is a second kind of CDO, which is called a synthetic CDO.

Q. What is a synthetic CDO?

A. So a synthetic CDO is going to have the same economic purpose as the cash CDO, but instead of being based on actual triple B mortgage backed security tranches, as shown here, it's going to be based on credit default swaps or what are called CDS. And that, unfortunately, introduces a new layer of complexity, but that's what it is. It's a portfolio of credit default swaps.

Q. All right. I would like to have you explain what a credit

default swap is. Do you have a slide that will assist in that explanation?

A. I do.

Q. All right. Can you tell us what a credit default swap is and how it works.

A. Right. So a credit default swap is a -- it's a financial contract entered into between two parties. And in this diagram here at the highest level, you can see one of the parties is called a protection buyer. And the other party on the right-hand side is called a protection seller. And what they're going to be transferring, or what one is selling and the other one is buying, is risk protection.

Now, it's a financial contract. A good analogy that may be sort of more accessible to many people in understanding this is it serves an insurance kind of function. In other words, you can think of it that the protection buyer in this financial contract would sort of be like a policyholder buying fire insurance against their home. That's -- you're buying protection against some risk. And the protection seller on this financial contract, the analogy to insurance would be it's an insurance company, the company that's selling you fire insurance against your home.

So it's, I think, useful to think of it as an insurance-like contract, but one has to be clear: This is a financial instrument. Only registered insurance companies can

sell insurance contracts. This is being sold by financial entities as a financial contract, but that's the fundamental economic purpose: A risk transfer.

The next feature that you have to understand is what is the insurance being written on? If we were doing an example with fire insurance on a home, the referenced item shown here at the bottom would be your home, and the risk would be that it might have a fire. In this particular credit default swap example, what's being referenced is a financial instrument. And the specific financial instrument in this example is going to be the triple B tranche from one of these mortgage backed securities. And the risk that people would be concerned about, participants in the financial markets would be concerned about is, are the borrowers underlying this MBS tranche going to fail to make their payments or not? It's a credit risk, and that's why the instrument is called a credit default swap. The idea is that what's being insured, referenced is -- the word in this diagram is this risk of default.

And so with those three building blocks, understanding that there's two participants, what the diagram shows is it really does function like an insurance contract. The protection buyer, which is like the policyholder, is going to make payments to the protection seller, the insurance company. And if all goes well, then of course the -- that's all you do. You pay your insurance premiums and you're actually glad

nothing bad happened. It's like paying insurance on your home and being happy it didn't burn down. That's good news. But, of course, if the bad news occurs and the risk element occurs -- in this case that the borrowers do default on the mortgages and on the triple B tranche -- then the top line becomes relevant and the insurance company or the protection sellers have to make the payments to the protection buyer in order to satisfy the claim in effect. So it's a device that's become very important in the financial markets for transferring risk.

One other thing I should explain, when you use the analogy to fire insurance on your home, while an insurance company would generally sell insurance to you against fire on your own home, they really would not sell you insurance against fire on somebody else's home. The insurance company might worry about, you know, why are you buying insurance on that house? And maybe you're going to do something bad to that house or something. So insurance companies will generally only sell insurance if you own the asset, whereas in these financial markets that isn't a requirement.

So the protection buyer might very well have held the triple B tranche in their own portfolio and were buying protection against it. That would be the fire insurance analogy. But equally well, they could be just thinking that things are going to go very bad in this market, and we can make

a profit by buying insurance, which will pay off if the event occurs.

And so that's what in the bottom it says that this protection buyer need not actually own the asset. It could be either way. And that can play an important role in these markets, knowing whether or not the borrower, the protection buyer is holding the actual asset.

Q. All right. Earlier you explained that a synthetic CDO was a portfolio of credit default swaps. You've now explained a credit default swap. How does a portfolio of credit default swaps get securitized into a synthetic CDO?

A. I think my next slide will help a little bit with that.

So this is a graphic of a synthetic CDO, and the parts in a way that are very much the same as a cash CDO is we have the investors on the far right side. And they're all going to be paid by the assets that are held by the special purpose vehicle. And they have the same ordering of triple A and so on. So the far right side is the same.

One difference is in the middle, as you may recall, when we did a cash CDO, the assets that were being held by the special purpose vehicle were the triple B tranches. They were holding those directly. That's where they were getting their payments, and that's how the thing worked.

In this case the difference is that what's being held by the special purpose vehicle here are really these credit

default swaps based on these referenced MBS. And the difference is that instead of getting paid -- the investors are paid not by the borrowers under the triple B tranche; they're paid by the policyholders that are making the insurance payments on them.

Now, from the standpoint of the final investors, they may not care very much. It's the same money in effect, and it's coming because of a triple B tranche. But the difference is that this is only a reference. It's an insurance policy that's making the payments rather than the actual cash. And that has one other difference in the diagram, is therefore we need to have in this diagram the protection buyers. These are the policyholders on the far left, because they are the ones that are making the insurance premiums that are going through the SPV and eventually creating the money to the investors.

So, again, from the investors' standpoint, it may look very similar. You're getting paid and you're taking a very similar risk. But from the standpoint of the design of the security, it's fundamentally different in that you've got a referenced security, and you have an insurance or risk transfer device rather than the direct cash instrument.

Q. All right. And the protection buyer of a synthetic CDO, what position are they holding in the security? Is that a long or a short position?

A. So in general the security has -- the two sides of the

security, the investors on the right side and the protection buyer on the left side, have very different hopes or aspirations for what's going to happen here to these securities. The investors hope that it's going to perform really well, and they're going to get paid all the money that they've been promised, and that's called in financial market jargon the long position. They're hoping it will be very successful.

Whereas the protection buyer in this is actually going to receive payments only if the security fails. And, again, in financial market jargon that sometimes is called the short position. And so you'll see people referring to the investors as the long position and the protection buyers as the short position on the CDO -- on the synthetic CDO.

Q. All right. And now earlier you explained the waterfall payment structure in a mortgage backed security. Do we have that same type of payment structure in a synthetic CDO?

A. Yes, exactly; that as long as things are going well, the money flows first to the triple A tranche and then down through the tranches as in a waterfall. And if things go poorly, it's going to be just the opposite; that if the default starts to occur, it's going to hit the bottom tranche first and then start to go back up through the sequence. So when you have that, then you have the sinking ship analogy.

So these basic features of all these securitizations,

mortgage backed securities and collateralized debt obligations have the same fundamental structure. The big differences are the underlying assets can be different, and they may have this insurance policy dimension of a synthetic.

Q. In a synthetic CDO that is a portfolio of credit default swaps, what is defaulting?

A. So the ultimate problem is that some borrower and, much more relevantly, many borrowers are failing to make their payments on the underlying mortgages. That's the starting point. When they fail to make their payments, it's the mortgage backed security. This SPV is not receiving the money that it was expected to from the borrowers. And so they have to start to hand out losses.

And that's where this reverse waterfall comes in at the MBS level; that first the equity tranche on the mortgage backed security is -- loses its credit and defaults, and then it starts to work its way up. So -- and that's what eventually occurs here, is that those losses start to accumulate among the CDO investors. But the true starting point of the problem is at the original borrower level, but then it goes through the transmission system here through the mortgage backed security.

Q. All right. And if we move to the next slide, here you show -- can we go back? Here I just wanted to have you explain that bottom arrow, the protection payment for defaults.

A. Yes. So -- yes, that's important actually. So when you do

have a substantial default on one of these CDOs, in a sense two things are happening. There's very bad news for the protection providers or the investors in the CDO, because they're no longer going to receive the money they were expecting. And they're going to have to declare it a loss.

On the other hand, what happens is they have to make payments to the protection buyers, these policyholders. And so it's those folks, what we called the short position, that are doing very well. So it's really like a teeter-totter. One side or the other of the transaction is going to be doing well. That means the other side is not and in default. It's the investors that do badly and the protection buyers that are actually benefiting.

Q. All right. Now, you've just explained a synthetic CDO. Is there a security that is called a CDO squared?

A. There is.

Q. Can you please tell us what a CDO squared is.

A. Yes. And, again, I think I have a graphic, maybe a series of graphics that will help.

So this is a third type of securitization, and it's basically the last one, is the good news. And so we've gone through the chain where we started with a mortgage backed security based on mortgages, and then we had a CDO based on tranches from a mortgage backed security. And now a CDO squared, the assets that drive it are going to be tranches from

a CDO. So it's a logical progression.

And each case you create a new security. You take some of those elements of that new security and you resecuritize them. And it's literally, in the CDO squared case, being resecuritized a third time. And so what you see here is on the graphic, on the far left is the existing CDO that we've just created, say. And in a typical case, what you would be selecting from that CDO is a number; let's say 50 single A tranches from 50 different CDOs that you've already created. So they go into the SPV and the portfolio manager in the middle.

And then those -- the income generated by those CDO positions is in turn going to be distributed among a new set of investors who are the investors in the CDO squared. And again, the key feature here is that even though you started with say 50 different A rated CDO tranches, you end up with a significant amount of triple A tranche. And that's the economic benefit of doing it a third time, is you keep getting a benefit from diversification. And it allows the entity that's creating these to be able to sell more of the triple A tranche. And at this period they were having a large number of investors who wanted to buy it. And this was a very useful way of satisfying that.

I should also add that this is a synthetic CDO squared. And it's because the instruments that created it were

a -- were -- was a synthetic CDO. That's important because what was going on in the marketplace say in 2006 or 2007 was there were not that many new mortgages being made. The number of mortgages was starting to become limited certainly by late 2006, but by using a synthetic CDO, they were able to keep creating new instruments, even though there were not all that many real mortgages, because they could base it on CDOs that they had already created it.

MS. PETERSON: All right. Now, your Honor, we are at the point where we would be going into the last slide where you wanted us to stop for a moment.

THE COURT: Come to the side bar.

(Continued on next page)

(At side bar)

THE COURT: So we have moved much more rapidly than was anticipated. So that's good. But it means we need to take this up without excusing the jury, so let me see that slide.

MR. KEKER: And, your Honor, could I make my objection when she shows it to you?

THE COURT: Sure. Hang on just a second.

(Pause)

THE COURT: Okay. So I'll hear from defense counsel in a minute.

This slide shows two different things, as near as I can tell. It shows the fact that because of a leveraging that's occurred, a small default gets leveraged into a much bigger impact on the CDO squared tranches. That seems to me to be relevant and permissible.

There is, however, a second aspect to this, which is it puts a specific figure on it which is that all mortgage pools -- I'm sorry, down here, as little as 8 percent could create total CDO loss. So, in the --

MR. KEKER: Up here 10 percent.

THE COURT: Well, the 10 percent is given as an example. So, I mean, I could see him testifying to all but this footnote as an example of what happens to show the effect of the leveraging.

Now, when in his report the reference to 8 percent was

a footnote that gave no explanation other than -- a citation?

MS. PETERSON: Right. It cited to that study from the Philadelphia reserve, federal reserve.

THE COURT: Right. So that part of his testimony is only as good or bad as that study.

So now let me hear from defense counsel.

MR. KEKER: Well, first of all, your Honor, with permission, I'd like to go back to the basic relevance of this. The fact that these are wildly risky and wildly leveraged instruments, securitized three, four, five times is not relevant to anything in this case -- in this negligence case against Mr. Stoker.

THE COURT: On the contrary, I think it has formed part of what you've already argued on your opening statement. Your opening statement was all about how this is a form of gambling. And that's why, if it is a form of gambling, that's why it is a form of gambling, so far removed from the underlying economic security. So that objection is overruled.

MR. KEKER: Could I just clarify, your Honor, because, I mean, the fact that it's gambling, it's legal gambling -- we are not trying whether or not this kind of security was proper or legal or whatever. I mean, it was legal. And the question about Mr. Stoker's negligence doesn't depend on whether or not he was dealing with an instrument that's basically gambling. It depends on whether or not he was acting as a reasonable

structurer of such an instrument at that time.

THE COURT: No, I don't agree with that. As a matter of fact, I mean, I was surprised there was no objection to your opening, but the essence of this -- of the claim here is that it may be a form of gambling, but it's still illegal to run a rigged table. And the reason, the motive for rigging the table is the fact that it's so highly leveraged. And that cuts both ways. So I don't accept that objection.

I do have doubts about this footnote. You object to that as well?

MR. KEKER: Yes, certainly. I thought you had decided, basically decided that last week, but --

THE COURT: Yes.

MS. PETERSON: I think we can take that footnote off.

THE COURT: That's what I think you should do. Thank you.

(Continued on next page)

(In open court; jury present)

BY MS. PETERSON:

Q. All right. Professor Jaffee, we were discussing this CDO squared and the different levels of securitization that we have been through. Does the multiple levels of securitization create any particular risk issues with respect to the multiple levels and the CDO squared?

A. Yes, it does. I mean, we've seen already in any of these securities, on an individual mortgage or a mortgage backed security or a CDO or CDO squared, that there's a potential for loss. But what's a special feature of a CDO squared is that this potential for losses or the size of the potential loss gets magnified because of the series. The three-way securitization actually magnifies the potential losses.

Q. All right. If we'll go to the next slide. Can you please explain what this is showing us.

A. Yes. And so what this graphic shows is that you start with a relatively small loss in some mortgage securities. It doesn't matter what the number is, but it's going to be a relatively small number. So that's the beginning point. And we know that's going to have some ramifications for the mortgage backed security, that some of the investors in the MBS are, therefore, not going to get paid. And in the particular example I have here, it's going to be there's enough losses on the underlying mortgages so that all of the tranches up through

the triple B tranche get wiped out in all of the mortgage backed securities, but none of the triple A tranche holders are affected. So they're still above the water line in the sinking ship analogy.

So that's the kind of an experiment that I have in mind where the loss rate is sufficiently low that it affects up to the triple B tranche in the mortgage backed security but no higher.

Q. And how does that affect the next level of securitization?

A. So then we can start to look at the next -- at what's currently as the yellow box, which would be the CDO level. And if we go to the next step, we'll see that the effect of all of the triple B tranches losing their money means that the CDO is a complete loss. And the reason is that, remember, the CDO was based only on triple B tranches. And so if all of the mortgage backed security triple B tranches are wiped out, then the entire CDO, including the triple A tranche of the CDO, is wiped out. And that's the magnification effect, is at that stage.

And then it goes, if you just go one further stage, a CDO squared only makes it one more extreme; that because the CDO squared is based on the CDO tranche, and since the entire CDO has been wiped out, so is the entire CDO squared. And so this is the fundamental economics of this process of resecuritizing the instruments, the underlying mortgages means that there is a potential for this extreme loss at the far end

of the CDO squared for all of the tranches, including the triple A tranche.

Q. All right. Thank you very much, Professor Jaffee.

MS. PETERSON: Your Honor, I have no further questions.

THE COURT: All right. Cross-examination?

CROSS EXAMINATION

BY MR. KEKER:

Q. Would I be correct in assuming, Mr. Jaffee, that you believe the CDO squared business was very, very risky?

A. Risky from -- as an instrument for investors?

Q. Yes.

A. Yes.

Q. And did people in 2006 and 2007 that were in this business know that?

A. So you're talking about those that are creating the instruments or those that are -- or everybody?

Q. I'm talking about anybody in the CDO business that knows enough of the process.

A. Well, it's -- you really need to get more specific, because, for example, the triple A tranches of the CDOs are being rated by the rating agencies as triple A. And so to that level, and in that sense, they're saying to the world in their opinion these things were basically risk-free.

As you go down the structure of the risk is more

evident and more stated. And as I've just said, the potential even for a complete wipeout on the triple A tranche is there. But it wasn't stated very explicitly in many cases.

Q. The people who bought the triple A tranche didn't know that what your numbers -- 10 percent subprime mortgages going bad could affect everything they were doing in the CDO squareds four times doubling the bet, bet, bet, bet, bet, bet?

THE COURT: Sustained. Argumentative. Calls for speculation. Beyond the scope. And numerous other objections on the sort that we discussed when we were having our conference on Friday, counsel.

MR. KEKER: Your Honor, could I ask to see Professor Jaffee's slide 12 that he prepared and was just put up? I have to ask --

THE COURT: Sure.

MR. KEKER: -- SEC counsel.

BY MR. KEKER:

Q. I want to go back to this credit default swap which you explained to the jury that's the basis -- that is part of the basis of how we get to CDO squareds.

You talked about insurance, but this is a financial -- a credit default swap is a financial contract where the protection buyer says, I'll pay you a regular amount of money, and the protection seller says, I'll take your money; and if something goes bad with whatever we're betting on, then I'll

pay you back something. Right?
A. That's the characteristic of a credit default swap. That's true.
Q. And a synthetic credit default swap is a situation where you just -- they just agree on what they're going to bet on. They don't own it. Nobody owns it. They're just -- they find a reference asset and bet on it?
A. That's right. They are taking -- it's -- you're using the word bet. I would say they're taking positions, but I agree with the concept.
Q. Okay. And now in -- for credit default swaps, is the only way the protection buyer can make any money is if there's a total default, or is there a market for the protection buyer position?
A. So you're saying once they've created the credit default swap, and this buyer owns it, can they now sell it in a marketplace?
Q. Yes.
A. So there is all kinds of different credit default swaps in different markets. Some of them are markets that actually exist and were active trading. In other cases you would have to go back to the exact party that sold you the insurance and you would have to try to ask them, would they be willing to renegotiate or would they be willing to buy it back? And they may say no. So it's not a simple answer to that, but --

Q. In terms of the areas where there is a market and credit default swaps, did people -- where they're trading them, did some protection buyers take a position and then go out and say, my position is that I have to pay 2 percent, or I have to pay some amount of money every quarter for the life of this contract, would you like to buy my position? And was there a market that way, where the price would change?
A. So there were markets that were trading credit default swaps. One should understand that it depends on how well that market would -- whether it would exist and how well it would work would depend on the security that's being referenced.
Some of these credit default swaps were based on bonds by AT&T. So the referenced security on some credit default swaps, not the ones we're discussing here, were AT&T bonds. Those probably had a pretty -- you know, readily available mark.
But if you're talking about a tranche on some specific mortgage backed security, and I've bought an insurance policy and now I want to sell it to somebody else, it's not going to be a very good market. You could try and you could go to some investment bank and -- hoping they would make you an offer, but it's not going to be a marketplace in the normal sense.
Q. In 2006 and 2007 was there a considerable demand to buy the protection seller side of CDOs and CDO squareds?
A. Yes. I mean, that -- there were an audience of potential

protection buyers who were interested. That's why they were able to create these instruments.

Q. And if you had a protection buyer position -- or I was talking about protection. Did I say buyer or seller?

A. I think you said buyer.

Q. I beg your pardon. Let's stick with buyer.

What was there, considerable demand in the market place, lots of people who wanted to buy the protection buying side of these transactions?

A. Mm-mm, yes.

Q. And was there a price that would move day to day, week to week, about how much you could either sell or buy that position for?

A. You could call up an investment bank and say, if I wanted to try to buy this, what might be the price at which you could sell it to me; but it's -- I think -- this is -- the market in which these traded, the instruments you're now talking about was an over-the-counter market in which you had to have two parties call each other and actually talk about it. And I would say that you could get a quote but it might not be a reasonable quote.

Q. Okay. And then on the protection seller side, same thing. Was there a market where you could buy -- where you could find out what the price -- you'd have a position, that price might change. You might find somebody to sell it to, make a profit

or take a loss?
A. If you're -- if you're talking now still at the level of the credit default swap, I would say the same applies. But, of course, once you put these credit default swaps into a CDO -- CDO, you've changed the nature of that answer. But if we're still focusing only at the credit default swap level, both sides of the transaction are going to be over-the-counter transactions.
Q. Let me move up to the different level, the CDO squared level, which is what we're going to be dealing with in this case. You said -- I think you said someone does well and the other side doesn't. That's the nature of the business, right?
A. Of a -- that's the nature of a credit default swap and a -- it's the nature of a synthetic CDO or synthetic CDO squared.
Q. All right. And to have a synthetic CDO squared that's made up of a lot of credit default swaps, you need to have a situation where there's somebody to bet both sides; somebody who wants to bet the long side, somebody who wants to bet the short side, don't you?
A. Yes. Or the way I would put it, you need investors who are willing to become the protection sellers on the right side, and you need other participate -- market participants who want to buy the protection, and they become the protection buyers, and you need both parties. Absolutely.
Q. Okay. Thank you. And sticking with CDO squareds then, in

a CDO squared, is there something called the -- I think you called the dealer or the arranger?

A. So there are a large number actually of entities that helped create a CDO squared. One of them would be an -- is what I've called an arranging bank or an arranging dealer. Let's call it an arranging bank because that's probably what's relevant to this case.

Q. Okay. And so the arranging bank is the --

MS. PETERSON: Your Honor, I'm just going to object that this is beyond the scope of Professor Jaffee's direct testimony.

THE COURT: I'll allow it. Thank you.

Q. The arranging bank is the entity that has the idea for putting together a CDO squared in the first place, is that right?

A. That's generally the case.

Q. And it figures out what the shape of the deal would be, the parameters of the deal?

A. That's true.

Q. And it figures out how it's to describe the deal to the market?

A. Yes.

Q. And it figures out the size of the deal; is this going to be a $250 million deal or $500 million deal or something else, right?

A. Yes.
Q. And the arranging bank, in fact, hires the asset manager, right?
A. Yes -- well, in the name of the securitization, but they're going to be -- they choose them.
Q. Okay. But they go out and there are managers throughout, I guess, the country, but certainly here in New York, managers whose reputation is built around being a good asset selection manager for these CDOs and CDO squareds, right?
A. That's right.
Q. And one of the -- you happen to know this one -- the Credit Suisse Alternative Capital is one such manager that has a good reputation?
A. At that time they had a good reputation.
Q. And the arranging bank, once they put together the securitization -- let's just talk about what the risks are. They run a risk that at the end they don't find investors to buy the notes that they're creating. Right?
A. That's one risk they would run.
Q. They have this warehouse, and we're talking about synthetic CDOs?
A. Mm-mm.
Q. So, if they can't sell -- if they can't find investors to buy what they're selling, then they're going to get stuck with it, right?

A. It's on both sides. I mean, they have to find the investors who want to be the protection buyer -- sellers, who are in the right side of that figure, then they need to find the protection buyers on the other side, if they're going to be sell -- sell out the deals on both sides. It is a case where they have to deal with both sides of the transaction.
Q. And I believe you've expressed -- if they don't sell out the long side of the transaction, they're left holding the bag, are your words, right?
A. Yes, I would say that's right.
Q. Now, as you just said, the arranging bank has also responsibility for the other side of the transaction, which is essentially this bet between two sides?
A. Mm-mm.
Q. And that's the -- what we call the protection buyer -- or trying to figure out how -- what to call it, the protection buyer side?
A. Yes.
Q. It's what you described as the short side of the transaction?
A. Yes.
Q. Right? And now this is a transaction where somebody is going to win and somebody is going to lose by definition, right?
A. Right.

Q. Okay. And at the start, when the CDO closing, who is 100 percent for all time the protection buyer in a CDO squared?
A. For all time?
Q. Yeah. Who is responsible for writing the checks that the protection buyer has to put in to the special purpose vehicle, into the CDO, for the life of the CDO?
A. So, this would be -- the arranging bank takes on the legal responsibility for making those payments, because the investors, of course, are not going to know who actually are the potentially dozens of different protection buyers. And so they look to the arranging bank, who then is supposed to in principle sell those positions to others. But I do believe it's the case that the arranging bank becomes -- remains -- retains the legal liability to make those payments.
Q. And, in fact, does make the payments; the checks come from, in this case, from Citi as the protection buyer for the life of the --
A. As long as -- until an event of default occurs or something, yes.
Q. Now, the protection buyer, the bank, can then offset its position, if it wants to, correct?
A. Yes.
Q. But there's nothing that requires it to offset its bank -- offset its position, is there?
A. I mean, technically, no. In principle it could not do

that. It depends on what it's told people it will or will not do, but I would say it need not do anything.

Q. It depends on what it's told people it will or will not do or may or may not do, correct?

A. Right.

Q. I think you've expressed the arranging bank's task is to take that protection buyer position, so they hold 100 percent when the thing closes. And if they wish to sell it, they could sell it, right?

A. Right.

Q. And you also recognize that maybe they won't sell that short position or all of it, right?

A. It's certainly possible.

Q. And investors know that, don't they?

A. That's a difficult question, what an investor in any particular CDO squared or in this one, what they were actually anticipating. This gets to the question of what they were expecting.

MR. KEKER: Okay. Could we give Professor Jaffee his deposition, please.

MS. PETERSON: I'm going to object that the question calls for speculation.

THE COURT: Sustained.

MR. KEKER: Could we approach the side bar, your Honor.

THE COURT: Sure.

(At side bar)

THE COURT: So I'm assuming he said something along these lines at his deposition, but that's not the issue. The question was -- there was -- the predicate to showing him his deposition or something was so investors would know X. I've been sitting here all afternoon wondering when someone would object to that question because he's not an expert in what investors knew. He's not proffered as that. No witness can testify as to what someone else did or did not know. There were questions along these lines actually put to the prior witness which were even more objectionable, but I didn't intervene because no objection was raised. But now an objection has been raised, and I sustained the objection.

So the fact that he said it at his deposition is neither here nor there. All objections are preserved to what was said in a deposition except objections to form.

MR. KEKER: Your Honor, for the record, at least, the witness said in his deposition, so I would say the investor -- first of all, it's well within the scope of what he's testifying about, which is the way CDOs and CDO squareds work. And the questions that were asked to him --

THE COURT: No, no, no. It's not a question about how they work. It's a question about what someone else, in fact, what a whole class of people knew. That was the vice. That

was the question you put. And there may be a way to rephrase it, but in its present form, the objection is sustained.

MR. KEKER: Just for the record, at page 144, 3 through 6 of his deposition, he said, I would say the investor clearly knows that initially, the full responsibilities with the arranging bank. It can't be otherwise. That's how it starts. I think the presumption would be that the arranging bank would be selling those positions, but there's nothing in the law that says they can't.

THE COURT: And I don't know who asked the question and if that was responsive to it, but in either way, it's not coming into evidence because he's not proffered as an expert, and he could not be proffered as an expert as to what someone else knew.

MR. KEKER: Okay.

(Continued on next page)

(In open court; jury present)

BY MR. KEKER:

Q. You were asked questions about what long means and what short means. Does long or short have a time component to it in the sense that if you say long, it means you're going to be long for one day, one week, three weeks or something like that?

A. I would say not necessarily.

Q. And if you say you're short, does that have a time commitment? Is that a commitment for where you're going to be the next day or week or whatever?

A. Not necessarily.

Q. It only describes a moment in time, not what a trader has done in the past or what he'll do in the future, is that correct?

A. Well, or actually, the way I was using it was using it to refer to the nature of the two sides of a transaction, not to individual investors. But I would agree that generally, when we say long or short, it's at a moment of time, not a decision-making process.

Q. And it wouldn't necessarily tell you at all what the trader did in the past or is about to do in the future, is that right?

A. That's true.

Q. Now, let me ask questions about another part of the CDO, the asset selection side. The assets are normally selected by a manager?

A. Yes, that's an asset manager.
Q. And in the case of Class V III, that was Credit Suisse Alternative Capital, CSAC?

MS. PETERSON: Your Honor, I'm going to object that this is beyond the scope.

THE COURT: Well, it is beyond the scope, but I will allow that as a predicate to whatever follows. We'll see whether what follows is within the limits or not.

But let me ask Mr. Keker, do you have more than five minutes left with this witness?

MR. KEKER: I think I do, your Honor.

THE COURT: All right. So find a spot somewhere in the next five minutes to stop, because we have to let the jury go for today. Then we'll bring him back tomorrow.

MR. KEKER: Well, anytime. Right now is fine.

THE COURT: That's fine. Okay.

So, ladies and gentlemen, we're off to a good start. We will see you tomorrow at 9:00. That means you need to be in the jury room at 9:00, and then we'll bring you right in and start -- and continue the testimony of this witness.

Have a very good evening. We'll see you tomorrow.

(Jury excused)

THE COURT: Professor Jaffee, you may step down. You probably know this already, but you should not talk to anyone, any lawyer or anyone else about your testimony overnight. And

we'll see you tomorrow morning at 9:00.

(Witness stood down)

THE COURT: Please be seated.

Just for the guidance of counsel, in the future, there are umpires of a wide strike zone and umpires who have a narrow strike zone. When it comes to scope or the objection beyond the scope, I have a pretty broad strike zone. Or depends which way you're looking at it. I allow most questions against an objection of beyond the scope. That doesn't mean there's no limits whatsoever, but usually, if there's a witness on the stand who has relevant knowledge about something that is relevant to the case, I think the jury should hear from that witness on that subject.

Now, it gets a little more complicated when you're dealing with experts, but nevertheless, the likelihood is I will overrule that objection except in the most extreme situations. So just be aware of that. Now --

MR. KEKER: Could I ask a question about that, your Honor, with this witness?

THE COURT: You don't like the fact that I'm ruling in your favor?

MR. KEKER: No, I think it's wonderful. I want to anticipate tonight what's going to happen tomorrow.

This witness opined and said a lot about his particular knowledge of Class V III. I don't have a lot on it,

but I'm planning to ask him about Class V III within the ambit of your ruling that said he could explain and should teach the jury about CDOs and CDO squareds. Class V III has some particular attributes I want to ask him about.

THE COURT: That's -- I mean, you hit the right point. If it is in the process of explaining how this particular CDO squared fits within the framework of what he has explained generally, that's permissible. If it goes beyond that to some factual statement about didn't everyone who invest in this know that they were taking on a risk or something, that would be objectionable.

MR. KEKER: I do learn, your Honor.

THE COURT: I'm sure you do.

All right. We have a bunch of other things you wanted to take up. Why don't I give you all a five-minute break and then we'll continue.

(Recess)

(Continued on next page)

THE COURT: There were some matters counsel wanted to raise.

MR. TAYLOR: Yes, your Honor.

I think the only issue that's currently hanging fire for right now, I'm not sure actually is ripe, is the plaintiff's sent us notice of an intention to move or at least certify as business records a whole swap of documents. They did this through five different declarations of various people, covers up most of their exhibit list.

We've objected to that. We told them we object to that.

We wanted to raise that before they tried to move those in sort of en masse. But if they are not planning on doing that right now, they are planning on taking those exhibits, they come with the witnesses, I don't know that we have a problem.

MR. INFELISE: Your Honor, we did not intend to offer them en masse. I believe some of them can be offered just based on the certifications. And to the extent we think that -- at a point in time where it's relevant, we will offer them. But we are not going to try and put in something like 30 binders of exhibits at this point.

THE COURT: So the only question I have is -- and maybe we don't have to address this now -- is there was an indication on Friday that there were some exhibits where the

defense was objecting to parts of the exhibit, but not the entirety. And that's where I thought I ought to get involved sooner rather than later, because that can take a while too.

MR. TAYLOR: Yes, your Honor.

I think some of that comes in the specifics of how these certifications come up. They have a witness who certifies that, for instance, an email was kept in the ordinary course of business and retained in the ordinary course of business, and then the attachment from the email is certified by somebody else who says that that spreadsheet was -- I mean I'm not sure how we deal with that until it actually comes up.

THE COURT: That's fine.

I have no -- you know, if you can wait, I can wait. That's fine.

All right.

Anything else that anyone needs to raise?

MR. INFELISE: No, your Honor.

MR. TAYLOR: Nothing, your Honor.

THE COURT: All right. Very good.

I was very interested in the last question about whether short and long had to do with time duration. And I was very, very grateful that counsel didn't ask whether it had to do with the physical length of parts of the anatomy.

So we'll see you tomorrow.

(Adjourned to July 17, 2012 at 9 o'clock a.m.)

INDEX OF EXAMINATION

PLAINTIFF EXHIBITS